

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

--o0o--

BALLY MANUFACTURING
CORPORATION,

Plaintiff,

vs.

D. GOTTLIEB & COMPANY,
WILLIAMS ELECTRONICS, INC.,
and ROCKWELL INTERNATIONAL
CORPORATION,

Defendants.

No. 78 C 2246

+ VOLUME ONE - PAGES 1 - 95 +

DEPOSITION OF:

STEPHEN D. BRISTOW

Thursday, August 5, 1982

IRVIN C. SCHEIBE
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I N D E X

Witness: STEPHEN D. BRISTOW (Vol. I)

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BRISTOW DEPO. EXHIBITS:

PAGE

1. Copy of drawing on which the witness made
some marks.

23

(Exhibit retained by counsel.)

note - see not let
Eisen(?) w/ Egan

BE IT REMEMBERED that, pursuant to Notice of Taking Deposition, and on Thursday, August 5, 1982, commencing at the hour of 2:20 p.m. at the Law Offices of Townsend & Townsend, One Market Plaza, Steuart Street Tower, San Francisco, California, before IRVIN C. SCHEIBE, a Notary Public in and for the City and County of San Francisco, State of California, personally appeared

A. I am employed STEPHEN D. BRISTOW, son.

called as a witness by the Defendants, who, being first duly sworn, was examined and testified as hereinafter set forth.

of the Advanced Technology ---o0o--- the Consumer Division of

FITCH, EVEN, TABIN, FLANNERY & WELSH, 135 South LaSalle Street, Suite 900, Chicago, Illinois 60603, represented by A. SIDNEY KATZ, Esquire, and JEROLD B. SCHNAYER, Esquire, appeared as counsel on behalf of the Plaintiff.

A. ARNOLD, WHITE & DURKEE, 400 One Bering Park, 750 Bering Drive, Houston, Texas 77057, represented by WAYNE M. HARDING, Esquire, appeared as counsel on behalf of the Defendants D. Gottlieb & Company and Rockwell International Corporation. ment, who McDUGALL, HERSH & SCOTT, 135 South LaSalle Street, Chicago, Illinois 60603, represented by MELVIN M. GOLDENBERG, P.C., appeared as counsel on behalf of the Defendant Williams Electronics, Inc.

Q. TOWNSEND & TOWNSEND, One Market Plaza, Steuart Street Tower, San Francisco, California 94105, represented by WARREN P. KUJAWA, Esquire, appeared as counsel on behalf of Atari, Inc. and the witness.

A. I was one of the ---o0o--- engineers working for

DIRECT EXAMINATION BY MR. GOLDENBERG

Q. MR. GOLDENBERG: Q. Mr. Bristow, would you state your name as you ordinarily use it in business and give your residence address.

A. Stephen D. Bristow. 12355 Hilltop Drive, Los Altos Hills, California 94022.

Q. Mr. Bristow, are you employed and, if so, by whom?

A. I am employed by Atari Corporation.

Q. In what capacity?

A. Currently I believe I am vice president of engineering of the Advanced Technology Group of the Consumer Division of Atari.

Q. How long have you held that position, sir?

A. Since January of 1981.

Q. How long have you been employed by Atari?

A. You have to clarify part time versus full time.

My full-time employ started somewhere around June 1973. My part-time employ started around September of 1972.

Q. All right, sir. Commencing with your full-time employment, what position did you have in June of 1973?

A. In June of 1973 I was hired as an electrical engineer for the coin-operated -- for Atari. There were no divisions then.

Q. How long did you hold that position?

A. Until approximately October of 1974.

Q. What generally were your duties during that period of time?

A. I was one of the electrical engineers working for

Atari, one of two. I was six months writing the Nutting Associates

Q. And doing what as an electrical engineer?

A. Designing new product and verifying and making sure the design of what was in production was correct. In February

1972 Q. Was this for the video games? The winter quarter of 1972

A. It was for the coin-operated video games effort.

Q. My questions are going to be confined to the 1973-74 period of time essentially, sir. University of California. When I

A. Yes. The spring quarter and, in fact, while I was

Q. In that period of time could you explain what, if any, was the relationship between Atari and Cyan Engineering of Grass Valley, California, if you know. Now at that time

A. The people that were labeled Cyan Engineering were people that -- primarily Larry Emmons and Steve Mayer -- that used to work for Ampex Corporation in Sunnyvale, California, that had left Ampex and had established a consulting business in Grass Valley, California. Making employment with Nutting and worked at. During the time frame between when I had left Ampex Corporation in approximately March of 1972 and when I had completed two more quarters, or approximately six more months, of schooling at the University of California in Berkeley was in approximately -- me I joined Atari full time, among the people that used I will have to backtrack. Corporation were Steve Mayer

Q. Would it help you, sir, if I gave you a piece of paper just for your own purposes and you wrote a chronology of dates down to sort things out? up in Grass Valley, California. I'm A. It would help. I left Nutting Associates in approximately September of '72, October, September, and before that

I had spent approximately six months working for Nutting Associates on Logue Avenue in Mountain View. *Atari, they had done their work* So, working backwards, I believe I will have to check that, I started at Nutting somewhere around March or February 1972 which was the end of, I believe, the winter quarter and the start of the spring quarter at Berkeley. *by the end of the quarter* were. *work for* My position prior to starting this school period was taking classes at the University of California. When I graduated from the *winter for* spring quarter and, in fact, while I was preparing for the finals for that quarter, I was told from Ampex that the job I had thought was arranged for me had evaporated due to a depression in the economy at that time and that I was now not going to be welcome there and I should find another job. *period of time involve any contacts with Atari* So among other people I contacted was Nolan Bushnell who had left Ampex and gone to work for a company called Nutting Associates, and I ended up taking employment with Nutting and worked there on the order of two quarters or six months. *on new Q.08* All right, sir. Now, when you became a full-time employee of Atari in '73 was there any kind of an association at that time between Cyan Engineering and Atari? *At Atari* At the time I joined Atari full time, among the people that used to be employed by Ampex Corporation were Steve Mayer and Larry Emmons who had been in their full-time employ, who, after I had left to go back to school had, I believe, broken off to start a consulting business up in Grass Valley, California. I'm not sure about the chronology of it, but they were involved with, I believe it was, Arvin Corporation doing some engineering

1 for various projects. And that by the time I joined -- I
 2 graduated from college in 1973 and joined Atari, they had done
 3 their work for Arvin, had become independent consultants and
 4 were either previously bought or in the process of very soon
 5 thereafter having their corporation become acquired by Atari.
 6 Q. So at the time you joined or shortly thereafter they
 7 were, in effect, a division of Atari?

8 A. It would be safe to say that after I graduated and
 9 came down to wherever Atari was in that summer, my understanding
 10 was they were completely Atari people and if they had a funny
 11 name like Cyan, it was purely a matter of vanity.

12 Q. All right, sir. Did your work, and let's take the
 13 period in 1973 after you became a full-time employee, did your
 14 work during that period of time involve any contacts with Cyan
 15 Engineering?

16 A. Yes.

17 Q. Could you tell me the nature of those contacts?

18 A. They were a part of Atari. They were working on
 19 new games and new projects. They were fully part of the company.
 20 And during the June '73 till the fall of '73 period, I was
 21 one of the design engineers, one of the couple, for Atari and
 22 they were working on new game concepts past what -- I think
 23 when I joined we were only making the Pong game and when I
 24 left in like October I think we were just starting to make
 25 or just started making The Space Race game and the Cyan people
 26 were viewed as a research arm of the corporation.

27 Q. Did that mean that you on occasion visited the Cyan
 28 people at Grass Valley?

1 A. Yes. I considered obsolete, you know, in a product and part

2 of it. Q. Did that mean on occasion that they would visit you
3 in, was it Los Gatos at that time? I business because of the

4 A. Yes. I was in it.

5 Q. So you were aware of the work they were doing during
6 this period, 1973, now, the latter half? As point of view?

7 A. Yes.

8 Q. In 1974 did you have continued contacts with the
9 people at Cyan Engineering?

10 A. Yes. Q. That is all right, sir. Go

11 ahead. Q. Did those contacts make you generally aware or aware
12 to any degree of the work in progress at Cyan Engineering? I don't

13 answer. A. Yes.

14 Q. Were those contacts again visits back and forth? It

15 to you. A. b. They were both visits from one party or another and
16 written reports. I was discussing the matter of Mr. Bushnell's

17 phone. Q. Did you have telephone conversations with them on
18 occasion? I think it would be safe to say one of the first

19 project. A. Yes. I left Ampex had been in the coin-operated game

20 industry. Q. Did you at any time in the period '73-'74 become

21 aware of a project involving pinball at Cyan Engineering? As

22 a project. A. Yes. I was in the industry that employed obsolete systems

23 of it. Q. Could you tell me your first awareness of that project,
24 sir, as you recall now? I was thinking about it.

25 A. The first awareness is hard to characterize. Because
26 after Nolan Bushnell had split off and started what turned
27 into Atari, his favorite story used to be he was going to figure
28 out where to go into business by counting the number of relays

1 which he considered obsolete, you know, in a product and sort
2 of evaluate the market placed on there. So there's sort of
3 a predisposition towards the pinball business because of the
4 number of relays in it.

5 Q. That he found more relays in an existing product
6 that became an attractive business from his point of view?

7 A. Correct.

8 MR. KATZ: I object to the question and the answer
9 as being based on hearsay.

10 MR. GOLDENBERG: Q. That is all right, sir. Go
11 ahead and complete your answer if you haven't done that.

12 A. I'm not sure what I have answered and what I haven't
13 answered.

14 Q. I think you have answered the basic question I put
15 to you, but if you wanted to add anything to that.

16 Q. We were discussing the matter of Mr. Bushnell's
17 philosophy about counting relays.

18 A. I think it would be safe to say one of the first
19 products ¹⁹⁴³ when he left Ampex had been in the coin-operated game
20 industry and that he -- whether it's hearsay, I don't know
21 legally how you say it, but he always considered pinballs as
22 a capital ^{intensive} incentive industry that employed obsolete systems
23 of logic. So, you know, for a long time we didn't do anything
24 about it but we were always thinking about it.

25 Q. I see, sir. Well --

26 MR. KATZ: I object to the question and the answer
27 as being based on hearsay.

28 MR. GOLDENBERG: Q. Directing your attention to

1 the project and actual beginning or ongoing project at Cyan-
 2 Engineering, what was the first occasion you heard of that,
 3 sir?

4 A. I'm talking about time so long ago it's -- I don't
 5 give any guarantees as far as my memory because it is quite
 6 long ago.

7 Q. I understand.

8 A. But we had talked about pinballs with the logical
 9 market or area to do a design project or a product for, you
 10 know, a time that started at least from the first time I went
 11 to Nutting Associates. It came up specifically as a product
 12 or project as far as the El Toro pinball machine which -- let's
 13 say I went to Key Games in late '73. It had to be early '74
 14 when we started kicking around the idea of doing a solid state,
 15 as we called it then, pinball.

16 Q. You have made mention of the El Toro project. Was
 17 that the El Toro project at Cyan Engineering?

18 A. Correct.

19 Q. Would I understand your testimony correctly that
 20 your knowledge of it as a project is early '74? Is that accurate?

21 A. The solid state pinball concept I wouldn't -- it's
 22 hard to say that we didn't discuss it in '73 but I think my
 23 memory is we actively started the project in very early 1974,
 24 towards the beginning of the year.

25 Q. How did you gain knowledge of that?

26 A. Well, not going into details, and I hope -- of the

27 Q. No, sir. Grass Valley?

28 A. -- in the interest of time, if you guys want to,

1 there was a time period where the coin-operated game market,
2 as an example like the jukebox or record player type markets,
3 and pinball markets, and Atari found itself in the position
4 of you could sell exclusively to company A in San Francisco
5 but you could not to company B who was a distributor.
6 So that I joined Atari full time in mid-year 1973
7 and towards the fall Nolan came up with the idea that if they
8 are not going to let me sell exclusively to everybody -- pinball
9 machine. You know, if everybody wants an exclusive, if I can't
10 sell to everyone, I will create my own competition so it doesn't
11 create a market. So he threw whatever means he -- Key Games
12 came into being and it was, as far as the trade knew, a separate,
13 independent company. But it turns out, as I believe it was
14 an Atari -- be it Atari or Bushnell-owned entity that was its
15 own competition. Valley as being part of the same like

16 A. And in October or November of '73 I became vice presi-
17 dent of engineering of that Key Games entity. officer of Key
18 Games, we. MR. KATZ: I object to the answer and the question
19 as being based on hearsay. To the extent that the answer is
20 based on what somebody told the witness or to the extent that
21 he is stating what someone else was thinking, I would move
22 to strike it as being incompetent. that period of time from
23 Grass Val I would also object on the ground that the answer
24 is not responsive to the question.

25 Q. MR. GOLDENBERG: Q. The question I would put to
26 you is: How did you become aware of the commencement of the
27 El Toro project at Grass Valley?

28 A. I had already officially left being an employee of

1 Atari. I had already created a sign with my magic Sears router
2 that said Key Games that we put in front of the building for
3 Key Games in the fall of '73 and that I had continued to be
4 on the distribution list of the status reports, weekly status
5 reports, out of Grass Valley, which were Cyan Engineering,
6 which was Steve Mayer and et al., and I continued to be on,
7 the I'd have to say, the loop on what was happening and became
8 aware that they were talking about doing a solid state pinball
9 machine.

10 Q. So at least in part it was through these weekly status
11 reports that you gained this knowledge?

12 A. They mailed them faithfully, except when they didn't
13 have something to say.

14 Q. Did you in early 1974 continue to visit Cyan Engi-
15 neering at Grass Valley as being part of this loop?

16 A. Yes.

17 Q. In your capacity at that time as an officer of Key
18 Games, were your offices on the Atari premises in Los Gatos?

19 A. No.

20 Q. You had separate offices?

21 A. Correct.

22 Q. Did you have visits during that period of time from
23 Grass Valley, Mr. Emmons or Mr. Mayer?

24 A. Yes.

25 Q. Did that also serve as a vehicle to keep you informed
26 as to what was happening there?

27 A. Yes.

28 Q. On the occasion of any of your visits to Grass Valley,

1 let's say through the first half of '74, did you have any occa-
 2 sion to observe the work in progress on the El Toro project?

3 A. Yes. I was using a microprocessor and maybe in the late

4 Q. Did there come a time where you received or in any
 5 way learned that the El Toro project was complete? Looking

6 at it? A. Yes. My guess was it had long term -- you know, we

7 wanted. Q. When was that, sir? And, again, you understand this
 8 is just your best recollection of these matters. REMEMBER, WAS

9 to it? A. Oh, I understand. I just hope everyone else does. It

10 It's sort of like by quarters almost.

11 Q. Yes. KATZ: Objection to the answer as lacking in

12 any. A. I would say early in '74 my recollection is that

13 project sort of started in Grass Valley and since although

14 the trade didn't know it we were really the same entity, I

15 have always been and still am on the distribution list for

16 the weekly reports from Cyan or Grass Valley. I think we finally

17 started -- there was a proposal sometime early in the year

18 from Steve Mayer and Larry Emmons on here's this magic little

19 microprocessor from Intel, and this electronics, and we can get

20 rid of the relays to do a pinball machine. " If I had to say

21 it was January or February in gross terms like the first quarter

22 of '74 where it was, you know, proposed as, hey, we want to

23 spend this money. We want to try and do an electronic pinball

24 machine. MR. GOLDENBERG: You have no right to direct any

25 Q. Using a microprocessor? On with this witness or how

26 he. A. Well, we did not at the front end decide that it

27 was going to be a microprocessor or not. We first decided

28 it was going to be electronics. As I remember, we went through,

1 in fact, a study which said we can do it for X price on the
 2 electronics or logic gates or integrated circuits and we can
 3 do it for Y price using a microprocessor and maybe in the long
 4 term the microprocessor approach is going to be cheaper. They
 5 did a paper study which ended up culminating in us looking
 6 at it and saying gates cost X but long term -- you know, we
 7 wanted to explore it with the flexibility that a microprocessor
 8 is going to give ^{us} so that the go-ahead, as I remember, was
 9 to take the microprocessor approach as far as the first practi-
 10 cal implementation early in '74.

11 I would, MR. KATZ: Objection to the answer as lacking in
 12 any foundation and consisting largely of speculation.
 13 I also make a request, with your indulgence, Warren,
 14 that perhaps the witness would give an answer that is more
 15 narrow, specifically in response to the question, in order
 16 to expedite this proceeding.

17 MR. GOLDENBERG: Mr. Katz, this is my interrogation.
 18 I will thank you, sir, to keep your oar out of it until you
 19 do your interrogation. If you have an objection, please make
 20 it and then subside. But don't try to conduct my examination
 21 of the witness.

22 MR. KATZ: I am not. I was directing that comment
 23 to Mr. Kujawa.

24 MR. GOLDENBERG: You have no right to direct any
 25 comments to Mr. Kujawa in connection with this witness or how
 26 he responds to a question.

27 MR. KUJAWA: Mr. Katz, with respect to your request,
 28 I think the witness should answer to the best of his ability

and I believe he is doing that.

THE WITNESS: I personally apologize. I mean, I have seen -- I was the same from the very beginning to when

MR. GOLDENBERG: Q. You have no call to apologize.

A: I have been deposed twice and this is, I think, number three, on this issue and so to some extent the only ground rule is I want to tell what's up and what I remember and if I am confusing things by answering too much or too little or around, I apologize. But it's going to be the truth, regardless.

Q. No, sir. There is no need for you to apologize.

I would, however, as I say, put this question to you: Did there come a time when you gained information that the effort to put a microprocessor control in the El Toro pinball machine was complete? And if there did come such a time, I would like you to tell me that time.

A. I think the -- that took place in May of 1979

MR. KATZ: Objection to the question as being compound, as consisting of two questions.

MR. GOLDENBERG: Q. Go ahead and answer the question.

MR. KUJAWA: Do you understand the question?

A. THE WITNESS: I believe I do. Should I answer?

MR. KUJAWA: Sure. I can say.

THE WITNESS: We're talking about ancient history. But the question was the El Toro project was obviously ended when we started the Delta Queen project which I believe was toward the summer of 1974. Prior to that we had done the design and a test on a prototype machine with microprocessor electronics and since in my mind the whole process of what we were doing

1 in pinball electronics was a continuum -- I mean, it wasn't
 2 one project followed by something, a delay and another. I
 3 mean, the goal was the same from the very beginning to when
 4 we went into production. I can't tell you when we finally
 5 got the last answer on El Toro because I think, as I remember,
 6 we actually ended up while we were working on Delta Queen
 7 cannibalizing the dead carcass or the cadaver of this damn
 8 El Toro to test some other stuff. It was a continuous process.

9 a Q. So you saw it not as an El Toro project but as a
 10 pinball project? A. That microprocessors made more sense and
 11 if I A. As an electronic pinball project. One-ish time frame.

12 Q. Did you yourself, sir, ever have the occasion to
 13 see the El Toro pinball game with a microprocessor controlling
 14 the game? A. All right, sir. So at this point you really can't
 15 give me a MR. KATZ: Objections to the question as having been
 16 asked in previous depositions that took place in May of 1979
 17 and in January of 1979 and is now being asked again, the same
 18 question. I understand.

19 Q. MR. GOLDENBERG: Q. Do you understand the question,
 20 sir? A. If you had to pin me down, I'd say it would be the

21 A. I understand the question and I understand the objec-
 22 tion and I want to know what I can say.

23 A. MR. KUJAWA: Answer the question.

24 Q. MR. GOLDENBERG: Q. Answer the question. Answering?

25 A. I saw the El Toro machine running under a micropro-
 26 cessor control. I have any memory of the layout of those premises
 27 at Q. When was that, sir, your best recollection, the first
 28 occasion? They have not changed the concrete structure of the

1 A. It was not the beginning of the year. It was not
2 the end of the year. It had to be a financial type and, say,
3 you know, when was it? It was sort of the second or third
4 quarter. It wasn't at Christmas and it wasn't at the end of
5 the year. It was sort of -- it was in the building they shared

6 with Q. The middle of the year? A. Yes, in the middle of the year.

7 A. Well, we started first -- I mean, my recollection
8 is, you know, we turned around in '74 and first we ran through
9 a debate on do we run a microprocessor or do we run discrete
10 logic. We settled that microprocessors made more sense and
11 if I had to say like the February through June-ish time frame,
12 we decided we're going to look at the microprocessor because
13 in the long term that makes more sense.

14 Q. All right, sir. So at this point you really can't
15 give me a definite date as to when you first saw the El Toro
16 game operating under processor control. Can you give me --

17 A. Well, I may have misunderstood -- not misunderstood,
18 but finally understood. I'm not sure if --

19 Q. All right, sir. It's a question in that it was designed
20 to be. A. If you had to pin me down, I'd say it would be the
21 spring to before the summer of 1974. I'm sure that it was playing

22 as a Q. Where was that when you saw it? A. Something we wanted
23 to do. A. In Grass Valley, California.

24 Q. Was it on or near the premises of Cyan Engineering?

25 A. It was on the premises. A. A game?

26 Q. Do you have any memory of the layout of those premises
27 at that time?

28 A. They have not changed the concrete structure of the

1 building. So, yes.

2 Q. I have reference physically to the Cyan offices within
3 the building.

4 A. Yes. The very first time I saw the El Toro machine
5 was, I believe, at Cyan and it was in the building they shared
6 with, among other people, there was Eigan Engineering or Eigan
7 Systems, Litton Engineering, and I don't know who else. Some
8 real estate company I'm fairly sure.

9 The very first time I think I saw the El Toro was
10 not on the floor that Cyan was on, but it was on the floor
11 that Eigan Systems was on where they had the mechanical version
12 that we're talking about converting it to electronics which,
13 I believe, was the next one up.

14 Q. Was it operating at that time?

15 A. Yes.

16 Q. As a pinball game?

17 A. We didn't buy a non-functioning pinball. I mean,
18 it ran as a mechanical pinball. I'm not sure if --

19 It's a difficult question in that it was designed
20 to operate as a mechanical pinball. When I went to see it
21 at the Eigan area, I'm not absolutely sure that it was playable
22 as a mechanical pinball or not. But it was something we wanted
23 to convert to electronics.

24 Q. When was the first time that you saw it operating
25 as a microprocessor-controlled pinball game?

26 MR. KATZ: Objection. The question has been asked
27 and answered.

28 MR. KUJAWA: Today?

1 MR. KATZ: He said the spring to before summer of '74.

2 MR. GOLDENBERG: Q. All right, sir. Mr. Katz does
3 remind me that that is the answer you have given.

4 When you saw it operating -- it was being programmed

5 MR. KATZ: I'm just trying to shorten this up, Melvin.

6 THE WITNESS: Thank you. the phrase open house, but,

7 MR. GOLDENBERG: I'm glad you told me what you were
8 trying to do. We could run it and it was located like in the

9 Q. On this occasion when you first saw it operating

10 as a microprocessor-controlled pinball game, where was the
11 game? quarters from for the beer fund and the machine

12 was A. In Grass Valley, California. could work it and they

13 were Q. Whereabouts in Grass Valley, California? did it

14 run. A. It was in the Litton Engineering building, which

15 is the same post office address, I believe, as the Cyan Engi-

16 neering address. I believe it was on the same floor that Cyan

17 Engineering was. But there was a close relationship between

18 the Cyan people and we were already doing contract work with

19 the Eigan people. So I really can't say the very, very first

20 time I saw it running under a microcomputer was on which floor

21 or which, but it was a project we had started and I think our

22 people had programmed or done the design work on it. But I

23 wouldn't try and -- I cannot for sure declare whether it was

24 on floor two or floor three. A. That was within the Litton

25 Engi Q. Do you have any definite recollection of ever having

26 seen the converted El Toro game, and by converted, I mean con-

27 verted to operate under microcomputer control? Do you have

28 any definite recollection of having seen the converted El Toro

1 game operating outside of the premises, the offices, of Cyan
2 Engineering?

3 A. I remember my first recollection is it was upstairs
4 in Eigan. Then it came downstairs while it was being programmed
5 and designed in the Cyan premises. By the time we had like
6 -- I'm not sure, I'm afraid to say the phrase open house, but,
7 I mean, there was an open house type function to where we had
8 already proved we could run it and it was located like in the
9 cafeteria where the Coke machine was where there were some
10 tables where the Cyan people played some games that they were
11 collecting quarters from for the beer fund and the machine
12 was placed -- we had already proved we could work it and they
13 were sort of like collecting consumer inputs on how did it
14 run. 11, you know. You might have some -- no one would walk

15 up the stairs. My recollection is that this machine was sitting
16 in the commons area or the cafeteria area of the Litton building
17 and next to it, like it was on a gray steel cart, was the
18 computer system that was running the pinball machine.

19 public In fact, there was even, as I remember, a little
20 card that said, "If the machine screws up," you know, "phone
21 up Jody next door on how it worked," because they were trying
22 to find out, you know, besides themselves get a lot of plays
23 on it and find out how the damn thing ran.

24 Q. So Now, this cafeteria, that was within the Litton
25 Engineering building?

26 A. Correct.

27 Q. Was that cafeteria near the Cyan offices?

28 A. It was like the next wall over but in a public area.

1 Q. To your knowledge was that a public cafeteria?

2 MR. KATZ: Objection to the question as indefinite.

3 MR. KUJAWA: What does "public" mean?

4 MR. GOLDENBERG: Well, all right. Let me withdraw
5 that.

6 Q. To your knowledge could anyone having legitimate
7 business in the building use that cafeteria?

8 A. It was less legitimate business than if someone drove
9 up the road into this building, parked their car and walked
10 in, until they got to this space there was no one that would
11 challenge them. So it was to that extent public, to the extent
12 it wasn't, sitting in a shopping center and the people would
13 normally walk up to it, and this thing ^{was not} sitting on the top of
14 a hill, you know. You might have some -- ^{privacy -- that (added) too} no one would walk
15 up the street and walk up there. But there was nothing to
16 stop anyone from doing it.

17 Q. There was no sign outside the building saying, "Cafe-
18 teria inside"? I mean, it wasn't attempting to attract the
19 public in that sense?

20 A. It was not attempting to attract or not attempting
21 to distract. I mean, it was just there.

22 Q. All right, sir. I show you a drawing that has been
23 made by a witness in this matter and identified as Exhibit 1
24 in the Schleeter deposition and ask you to take a few minutes
25 to look at the drawing.

26 A. Yes.

27 Q. Do you by looking at the drawing have any understanding
28 of what is attempted to be depicted there?

1 MR. KATZ: Objection to the question as being leading
2 and shoving this thing in front of the witness without estab-
3 lishing that he doesn't have any independent recollection of
4 his own.

5 THE WITNESS: Would you like me to draw it?

6 MR. KATZ: I wouldn't like anything. I am just making
7 an objection here that you are taking someone else's views
8 and leading this witness into the same view.

9 Q. The witness has already demonstrated very poor recol-
10 lection of a lot of specific events in the past. He has indi-
11 cated expressly on the record that these things took place
12 a long time ago. Now you are taking something that someone
13 else recalled and trying to make this witness testify to the
14 same thing.

15 So I strongly object to that practice.

16 MR. GOLDENBERG: Q. My question to you, sir, was
17 looking at that Exhibit 1, do you form any impression as to
18 what is attempted to be depicted in that drawing.

19 A. I believe this drawing depicts a subview of what
20 the entrance into the facilities that Cyan Engineering occupied
21 where --

22 Q. Don't make any marks on it.

23 A. How could I describe it without making any marks
24 on it?

25 Q. All right. Here's a copy of it, sir. You wanted
26 to make a mark on the drawing.

27 A. If one walked into what I believe is depicted here
28 -- the entrance into the space was something I will mark 1,

1 and you walked up some stairs and turned down a corridor and
 2 you arrived at this hallway which I will mark 2, and when you
 3 walk in you were in the Cyan Engineering space, and from walking
 4 in at this point I labeled 2, I believe this Xerox that I'm
 5 looking at indicates where Ron Milner's office was, where Steve
 6 Mayer's office was, where the receptionist was, where the coffee
 7 machine was, where Larry Emmons' office was, where the lab
 8 air space was and where the Litton lunchroom was.

9 Q. Is the Litton lunchroom the cafeteria that you referred
 10 to a moment ago?

11 A. That is correct.

12 MR. KUJAWA: May I voir dire this witness one question?

13 best reco MR. GOLDENBERG: Surely. I saw the converted El Toro
 14 machine. MR. KUJAWA: Have you ever seen this drawing before
 15 right now? As I remember, we started the project, or he it we,

16 re or At THE WITNESS: No. ject, very early in 1974. The work
 17 went on. MR. KUJAWA: Have you ever discussed it with any
 18 of the attorneys present here, with myself excepted? or July.

19 But my rec THE WITNESS: I haven't discussed it with anyone
 20 on earth. worked, that we had tested it in the lab, it was

21 in this MR. KUJAWA: That is all I have. by people, that we

22 had to do MR. GOLDENBERG: Q. Now, could you with reference
 23 to the drawing indicate where the converted El Toro machine
 24 was when you first saw it? Not necessarily when you first
 25 saw it, but when you saw it in this lunchroom or cafeteria,

26 whatever it may have been. ay anything, it was like category. a
 27 s over of Do you understand my question, sir?

28 A. I believe I do. T My understanding is -- I do not

1 see when I look at this piece of paper any indication where
 2 any machine of any sort is. What I consider the cafeteria
 3 is labeled on this drawing the Litton lunchroom and I would
 4 say the machine was over in sort of like this corner that I'm
 5 marking with an asterisk.

6 MR. GOLDENBERG: I would like to have this document
 7 on which Mr. Bristow has put his marks, the 1, 2 and the asterisk,
 8 marked as Bristow Deposition Exhibit 1.

9 (A drawing on which the witness
 10 made marks was marked Bristow
 11 Deposition Exhibit 1 for identification.)

12 MR. GOLDENBERG: Q. Mr. Bristow, can I have your
 13 best recollection of about when you saw the converted El Toro
 14 machine in this lunchroom?

15 A. As I remember, we started the project, or be it we,
 16 he or Atari started the project, very early in 1974. The work
 17 went on, I think, from like February or so on. I can't pin
 18 down when I saw it in the lunchroom, be it May, June or July.
 19 But my recollection is it was like summer of '74 that we had
 20 proved it worked, that we had tested it in the lab, it was
 21 in this lunchroom and it was being played by people, that we
 22 had to make the decision to go on to the next step because
 23 the next step was going on with this next step which was the
 24 Delta Queen thing and we ended up showing that, as I remember,
 25 at the trade show that was October or November of that year.

26 A. So if I had to say anything, it was like categorically
 27 summer of '74.

28 Q. That is fine. Thank you. Was it operating as a

1 pinball machine on that occasion?

2 A. Yes. It went through a continuing series of experi-

3 ment Q. Was it operating under microprocessor control on
4 that occasion? It ultimately entered the electronic pinball

5 bus. A. Yes.

6 Q. How do you know it was operating under microprocessor
7 control on that occasion? On two previous depositions and

8 in JuA. Well, it's not just one occasion I saw it operating
9 under microprocessor control. Could you answer the question,

10 sir? Q. I understand that.

11 A. The whole goal was to try and make an electronic
12 microprocessor control pinball machine eventually. Specifically,
13 if it was sitting in the lunchroom or whatever we want to call
14 this little building or little room, there was this pinball
15 machine sitting there and there was this gray steel metal wheel-
16 around cart, the Intellec-4, I think is what it was called, a
17 development system, cabled next to it sitting there, and that
18 that system emulated or duplicated what the tested discretely
19 programmed chip would later do. We have no further questions.

20 Q. Was the conversion of the El Toro pinball game the
21 end of Atari's interest in solid state or processor-controlled
22 pinball? (Witness leaves room.)

23 A. No. KIJAWA: On the record. Yesterday at the conclu-

24 sion Q. I take it from that answer that Atari's interest
25 in that subject continued? conferred regarding the necessity

26 of t. A. Yes. depositions of Jody Sperry next Tuesday and

27 as a Q. Could you just describe generally what was done by

28 Atari after the El Toro conversion in furtherance of Atari's

1 interest in that matter?

2 A. We sort of went through a continuing series of experi-
3 ments or efforts to get us into the electronic pinball business.

4 Q. Did Atari ultimately enter the electronic pinball
5 business?

6 MR. KATZ: Objection to the question as having been
7 answered, that same question, two previous depositions ago
8 in January and May of 1979. And I have here today copies of

9 both the MR. GOLDENBERG: Q. Could you answer the question,
10 sir?

11 A. Yes, I think.

12 Q. Now, by that answer did you mean that there came an
13 a time when Atari manufactured and sold an electronic pinball
14 game of its own design?

15 A. Yes.

16 Q. What was the name of that game, sir, if you recall?

17 A. There wasn't one game. The first game that we sold
18 under ^{our} the name commercially was called Atarians.

19 MR. GOLDENBERG: I have no further questions.

20 THE WITNESS: Can I request a personal recess?

21 MR. GOLDENBERG: Indeed you may.
22 a statement (Witness leaves room.)

23 On behalf MR. KUJAWA: On the record. Yesterday at the conclu-
24 sion of the Lanny Netz deposition in Grass Valley, counsel
25 for both parties and myself conferred regarding the necessity
26 of the noticed deposition of Jody Sperry next Tuesday, and
27 as a consequence of those discussions it was agreed that in
28 exchange for the agreement not to take the deposition of Jody

1 Sperry next Tuesday we would examine the records of Cyan Engi-
 2 neering to attempt to discover any documents from the employment
 3 files of five individuals which would reflect the existence
 4 or non-existence of a confidentiality policy at Cyan Engineering
 5 or at Atari or both in the time frame from 1973 forward.
 6 In addition, I agreed on behalf of Atari to search
 7 my files to see whether I could discover a copy of an employment
 8 agreement of one Gregory Cox and I have here today copies of
 9 both the Cox employment agreement and also the results of the
 10 search done by Jody Sperry, who is the custodian of records
 11 at Cyan, for any documents from the following employment files
 12 which would reflect any confidential policy of Atari or Cyan
 13 or both from '73 forward:

14 For the record, the files that were consulted were
 15 the files of the following employees: Emmons, Mayer, Milner,
 16 Schleeter and Mike Rogers. We found no such confidentiality document
 17 in the file of Rogers. We did find documents in the other employees'
 18 files and I will now hand counsel for both parties a copy of
 19 what we found.
 20 MR. GOLDENBERG: Mr. Kujawa, I would like to make
 21 a statement at this time in connection with this matter. Speaking
 22 on behalf of Williams in this matter, we view this demand on
 23 Atari -- Therefore, while Mr. Kujawa may view it in a particular
 24 light, we MR. KATZ: Make it a request. to that view. Perhaps
 25 we have MR. GOLDENBERG: I make it a demand because I believe
 26 it was accompanied by a threat to subpoena on Atari.
 27

28 -- entirely inappropriate and out of order inasmuch

1 as discovery in this proceeding has been closed except for
2 the limited discovery, namely the depositions which are currently
3 in progress. We recognized, sir, that you have done what you
4 believed to be in the best interests of your client in connection
5 with this matter. For ourselves, we reserve all rights to
6 move in court in whatever we believe appropriate in connection
7 with this either before trial or at the time of trial respecting
8 the use of such documents for any purpose whatsoever and, as
9 I said, whatever other motion we might deem proper for Bally
10 in our view acting completely outside any order of this court
11 at this time.

12 We think you shouldn't have done it and we don't
13 necessarily propose to accept it. We think you should check your own files,
14 you thought. MR. KATZ: We object on behalf of Bally to your charac-
15 terization as to what transpired, Mr. Goldenberg, because these
16 documents were requested months ago and I know of no threats
17 to even subpoena them. They were merely requested from Atari.

18 I also object to the characterization of what
19 transpired yesterday by Mr. Kujawa on behalf of Atari because,
20 although we acquiesced in or acquiesced to the request not
21 to take the deposition of Jody Sperry, and these documents
22 were offered, we did not see where there was a quid pro quo
23 for the other. Therefore, while Mr. Kujawa may view it in a particular
24 light, we do not necessarily subscribe to that view. Perhaps
25 we have no problem. But I thought it best to state that on
26 the record. MR. KATZ: Right. I realize that and I appreciate
27 the volume. MR. GOLDENBERG: I have stated my position. I am

1 simply reserving rights, that's all.

2 MR. KUJAWA: I would also like to state that we viewed
3 the agreement to search the files for the documents that you
4 were interested in, Mr. Katz, as an agreement in exchange for
5 which you would not take the deposition of Jody Sperry next
6 Tuesday which you had noticed and you had also had a subpoena
7 issued out. I assume that you are going to stand by that.

8 MR. KATZ: Well, we agreed not to take the deposition
9 of Jody Sperry, but there was not a quid pro quo for your
10 production of these documents. I also want to mention that
11 we had included in our request similar employment agreements
12 from or for Gregory Cox, a previous employee of Cyan, and I
13 believe you indicated you were going to check your own files,
14 you thought you had received it some time ago from Jody Sperry.
15 We had never received it at our office according to my informa-
16 tion. So I would like to inquire as to whether you were able
17 to determine the existence of those documents?

18 MR. KUJAWA: Yes. I might say on that, it's our also
19 feeling that the matter of the Cox employment agreement copy
20 was a matter that is an old matter which we had agreed to attempt
21 to comply with your request. The matter of the documents that
22 I have just handed you pertaining to the confidentiality was
23 a voluntary action on our part. Those documents were not
24 subpoenaed. I don't recall whether the Cox employment agreement
25 was subpoenaed or not. But we had agreed to try to find it
26 for you. MR. GOLDENBERG: Yes, of course, we so agree.

27 MR. KATZ: Right. I realize that and I appreciate
28 the voluntary effort on your part, Mr. Kujawa.

1 MR. KUJAWA: I have just one last item and that is
 2 that the four documents which you have and which counsel for
 3 Gottlieb and Williams have are confidential documents. They
 4 are not stamped confidential in the same manner that previously
 5 produced documents from Atari have been stamped. Nonetheless,
 6 they state at the heading, "Employee Confidential Information
 7 and Invention Agreement." Mr. Bristow, on direct you testify
 8 that you would appreciate it if you would agree with me
 9 now that you will treat these documents as confidential documents
 10 and as though they had been individually stamped with the extra
 11 stamp.

12 A. Do you so agree?
 13 I believe MR. KATZ: Okay, yes.

14 Q. MR. GOLDENBERG: We agree. Cyan quarters you saw
 15 the same MR. HARDING: Fine. I mean generally with reference

16 to Exhibit MR. GOLDENBERG: I have here now the copy of the
 17 Gregory Cox employment agreement.

18 This one? MR. KUJAWA: I would suggest that this document also
 19 be treated as if it were a confidential document. I am not
 20 certain of the extent to which Atari wishes to continue to
 21 treat it as such. But for the moment I would appreciate it
 22 if all counsel would treat this as well as a confidential docu-
 23 ment and subject to the terms of the protective order which
 24 we have in force.

25 Do you agree, Mel?

26 MR. GOLDENBERG: Yes, of course, we so agree.

27 MR. KATZ: We agree.

28 MR. HARDING: Fine.

1 MR. GOLDENBERG: I will simply make the same reserva-
2 tion of rights I made a moment ago with respect to the earlier
3 production.

4 MR. KUJAWA: With that behind us, who is next?

5 MR. HARDING: Let's try to finish up real quickly.

6 EXAMINATION BY MR. HARDING

7 MR. HARDING: Q. Mr. Bristow, on direct you testi-
8 fied concerning the converted El Toro in the lunchroom in the
9 Litton building. Do you recall seeing the El Toro pinball
10 game in a converted state at any time within the premises of
11 Cyan Engineering?

12 A. I saw it being worked on within the Cyan quarters.
13 I believe I saw it completely running within those quarters.

14 Q. Do you recall where in the Cyan quarters you saw
15 the game completely running? I mean generally with reference
16 to Exhibit 1.

17 A. You mean Exhibit 1 -- Exhibit 1, 8/4/82, Schleeter?
18 This one?

19 Q. Well --

20 A. Oh. It's my deposition No. 1.

21 MR. KUJAWA: Bristow Deposition Exhibit 1, which
22 is the copy of the Schleeter Deposition Exhibit 1.

23 THE WITNESS: Okay. Before I saw it in the lunchroom
24 I believe if you walked in the door it was to your left as
25 you walked in being worked on and I believe it was finally
26 running there before I subsequently saw it in the lunchroom.

27 MR. HARDING: Q. Do you recall seeing it in any
28 other location on the Cyan premises?

1 A. Not necessarily on the Cyan premises. I saw an El
2 Toro that wasn't converted on the Eigan premises which I believe
3 was on the next floor.

4 MR. HARDING: I have no further questions.

5 MR. KATZ: Let's take a two-minute break.

6 (Short recess.)

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CROSS - EXAMINATION BY MR. KATZ

Q. MR. KATZ: Q. Is Atari still in the business of manufacturing pinball machines? A. No. of Key Games, had a private pilot's license.

Q. When did Atari abandon the business of manufacturing pinball machines?

A. In the latter quarter of I believe 1979. Q. Do you have any knowledge as to the reason for that abandonment of the pinball machine business?

MR. GOLDENBERG: Objection as being outside of the scope of examination permitted by Judge Grady in this matter at this time. you ever go there by yourself?

A. MR. KUJAWA: Okay. You can answer yes or no. no.

Q. THE WITNESS: Yes. go with other than Keenan?

A. MR. KATZ: Q. And what is that? a driver in his

car and MR. KUJAWA: Sid, at this point it seems to me you're getting close to examining with respect to business confidential information. I have no idea of what the scope of Judge Grady's order is so I am going to permit examination in this area provided that this section of the testimony be designated as confidential.

Q. MR. KATZ: I will withdraw the question. During that

period Q. During the time that you were working for Key Games, how often did you visit the Cyan facility? Keenan?

A. I did not particularly keep logs on it. Sometimes it was -- I can remember occasions where it was every week and I can remember occasions where it was more than four weeks between visits. But then on the average more probably like

1 once a month.

2 Q. And how did you get there?

3 A. Occasionally I drove, but since Joe Keenan, who is
4 the president of Key Games, had a private pilot's license,
5 I'd say for the most part he obtained a plane somehow and we
6 flew up with him.

7 Q. Did you typically go with Keenan when you went to
8 visit Cyan?

9 A. Yes.

10 Q. Did you ever go there with anyone else?

11 A. Yes.

12 Q. Did you ever go there by yourself?

13 A. I don't think I ever drove up just by myself, no.

14 Q. So who else did you go with other than Keenan?

15 A. I drove up with Nolan Bushnell as a driver in his
16 car and myself and Joe Keenan, and I believe Al Alcorn at one
17 time. I drove up with Lyle Rains as a passenger at another
18 point. Those are the ones that come off the top of my head.

19 Q. During this period when you were at Key Games who
20 did you go up with most often?

21 A. Keenan.

22 Q. Did you ever go up there with Al Alcorn during that
23 period?

24 A. Al Alcorn with the exception of Keenan?

25 Q. Yes.

26 A. I really can't say.

27 Q. Did you ever go up with Al Alcorn and Keenan?

28 A. I believe so.

trip. They were already reporting on a animal or some animal

Q. During the period of the spring of 1974 how often did you go up to Cyan?

A. You are trying to tie it down to a time period now.

Q. Were your trips irregular? Is that what you're trying to say?

A. They were not irregular, but they were not regular. They were not every Thursday. They were not, you know, three months with a gap with no trip.

A. Like I said before, they were on the average, if I had to pick a number, it would be like once a month that we would -- I wasn't keeping track of the time. There would be a stretch of eight weeks maybe without a trip and I think a couple of times we took at least one trip a week.

Q. When you went to Cyan on these trips, who did you confer with, if anybody in particular? Do you have any specific

recollections. MR. KUJAWA: When he got there?

MR. KATZ: Q. At Cyan. about being updated on their

Cyan A. I can't remember any trip in particular that I did not confer with either Steve Mayer or Larry Emmons.

Q. What was the purpose of these trips?

A. An update, a progress report, what's happening, what's new. was, you know, Ed Schlieter used at various times where he'd. Q. Was that a verbal report?

A. They were pretty consistently reporting on a weekly basis in writing, anyway. So I don't remember any particular written response from our visits. I mean, our visits were for our own personal benefit, not for the record necessarily.

1 I mean, they were already reporting on a formal or semi-formal
2 basis in writing, anyway. So it was for our benefit, not neces-
3 sarily a written record, that we came up there.

4 Q. Did you ever discuss anything on these trips with
5 anybody else other than Steve Mayer or Larry Emmons?

6 A. That's a difficult question to answer. I mean, any
7 of the people there were people I was likely to be talking
8 with. I mean, I'd walk in and say, "Hello, Jody."

9 Q. Did you ever have any discussions with Jody Sperry?

10 A. Sure. Like, "Has my office called?"

11 Q. Other than that. In connection with your updating
12 of what was going on at Cyan.

13 A. That is a difficult question. As far as different
14 conversations with people as a separate subject than different
15 updates on what was going on in Cyan?

16 Q. Yes, from different people. Do you have any specific
17 recollection of any discussions with anybody at Cyan other
18 than Larry Emmons and Steve Mayer about being updated on their
19 Cyan work, the progress of work being done there?

20 A. Sure.

21 Q. With whom?

22 A. There's a wide time frame you're talking about. See, there
23 was, you know, Ed Schleeter there at various times where
24 he'd come and he'd tell us what he was doing. There was --
25 oh, gosh. -- Ron Milner was there when I was up there visiting
26 various times. There was a mechanical engineer they had.
27 There were various technicians. There were -- I mean, I really
28 have trouble --

1 referring Yes, I had conversations. Yes, I got updates from
2 various people there. I really have trouble -- machine? Was
3 it a Q. Did you ever have any discussions about the El Toro
4 with any of those people other than Larry Emmons and Steve
5 Mayer, the El Toro project that you referred to on direct exami-
6 nation, that you specifically recall?

7 A. Well, I specifically recall the El Toro machine being
8 up on the floor where Eigan Engineering or Systems was located.
9 So I specifically remember talking to Jim Hebb and I believe
10 John Sperry about what they thought was up in the world of
11 pinballs. I don't remember necessarily any conversations past
12 that. I don't recall they should proceed with the project but it was not

13 -- I Q. Now, when you talked to Jim Hebb and John Sperry,
14 what was the substance of that discussion?

15 A. I can't remember the specific details of it. It was

16 open Q. And that was in the Eigan Systems facility; is that
17 correct? I don't recall assembled condition?

18 A. I specifically remember talking to them and seeing
19 the El Toro machine in the space they occupied in the Litton
20 building. Since they were under contract or doing work for
21 Key Games and doing contract work for Atari, I was seeing them
22 -- you know, I wasn't keeping track of which floor I was seeing
23 them on. So I may have seen them in the Cyan facility but I don't
24 I was not keeping track of it. the electronic analog. I don't
25 know Q. What was the condition of the El Toro machine at
26 that time? machine did. I'm just not sure whether it totally

27 resp. A. Could you clarify what you mean by "that time"?

28 Q. At the time you had these discussions that you are

1 referring to in connection with the El Toro pinball machine
2 what was the condition of that El Toro pinball machine? Was
3 it a completely assembled, operative pinball machine or was
4 it in some other condition? it was located on this floor where

5 Eigan was MR. KUJAWA: If you recall. You mean when he was
6 talking to Jim Hebb and John Sperry? the relays. I'm just not

7 sure what MR. KATZ: Q. Right at the point of -- for it was
8 total A. (Interrupting) What I'm recalling is one specific

9 case when it was upstairs in the Eigan Systems facility. As
10 I remember it then, it was in the process of being converted
11 to electronic operation and they had been doing some work that
12 indicated they should proceed with the project but it was not
13 -- I'd say the project was not ended at the point it was doing
14 some electronic operation. more specific recollection than that?

15 Q. Do you know if at that time the pinball machine was
16 operative as a pinball machine or was it in some disassembled
17 or partially assembled condition? it was probably the first

18 quarter A. When it was upstairs in the Eigan facility it was
19 partially operative, I'm sure, and I just can't say whether
20 it was totally operative. I mean, I just can't. you weren't

21 going Q. What do you mean by partially operative? here at

22 least A. Some functions worked and I just can't say whether
23 the total, every condition that the mechanical version responded
24 to or acted to was updated in the electronic analog. I don't
25 know that. As I remember it, it responded partially as a
26 mechanical machine did. I'm just not sure whether it totally
27 responded identically. kay.

28 Q. When you say it was partially electronic -- is that

1 what you said? MR. KATZ: By periodically I meant there was not

2 a fix. A. Yes. MR. KATZ: That said every Tuesday we went up there.

3 But Q. What did you mean by that? A. I'd say the word periodically.

4 A. As I remember it, it was located on this floor where
5 Eigan was. It was hooked up to some electronics that showed
6 that we could emulate the action of the relays. I'm just not
7 sure whether at that point when it was on that floor it was
8 totally duplicated with the pinball machine in its mechanical
9 version, acted like it. frequently.

10 Q. Do you recall what the electronics was? Technical

11 about A. No. None of the terms. I'm just trying to relate

12 what Q. Do you recall when this occurred?

13 A. Early in 1974. Isn't it, that no more than perhaps

14 eight Q. Do you have any more specific recollection than that?

15 A. I was going up there every month so it's hard to
16 pin it down. I was going up there periodically so it's hard
17 to pin down. But if I had to say, it was probably the first
18 quarter before very far into the second quarter of '74.

19 Q. Now, you said you were going up there periodically.
20 Do you mean periodically? My understanding was you weren't
21 going up there periodically but you were going up there at
22 least, say, some -- no more than two months would elapse before
23 you would go up again. In only one case did I ever spend the

24 night. MR. GOLDENBERG: Mr. Katz, I object to the premise
25 of your question which is totally at odds with the witness's
26 testimony. MR. KUJAWA: You said '75. Did you mean '75?

27 MR. KATZ: Okay. I spent the night?

28 MR. KUJAWA: Why don't you respond to that.

1 THE WITNESS: By periodically I meant there was not
 2 a fixed schedule that said every Tuesday we went up there.
 3 But what happened was we went up there I'd say the word periodi-
 4 cally but the intent was to go up there frequently. And that
 5 in no case did an extraordinary time period go by. But there
 6 is nothing to say if we went one Friday, we would go up next
 7 Wednesday. We went up there maybe the word should be frequently.
 8 If you say frequently means more than one day and less than
 9 a month, we went up there frequently.

10 A. MR. KATZ: Q. I don't want to get hypertechnical
 11 about the meanings of the terms. I'm just trying to relate
 12 what happened. how long did you stay before you would leave?

13 A. But it is true, isn't it, that no more than perhaps
 14 eight weeks would go by without another trip? you flew back

15 to K. A. I would say the case of eight weeks without a trip
 16 would be extraordinary. The case of less than one day between
 17 trips would be extraordinary. And in between was some sort
 18 of distribution. that El Toro in the condition it was in at the

19 time Q. Okay. Do you recall or can you pin it down with
 20 any more detail as to on this particular trip when you had
 21 this discussion with Jim Hebb and John Sperry how long you
 22 were at Cyan? king under -- you know, I believe they had a

23 A. Was I there? In only one case did I ever spend the
 24 night. So I'd say -- and that case was definitely in '75.
 25 So it was less than 24 hours. front end of discussing making

26 it electr MR. KUJAWA: You said '75. Did you mean '75? it was

27 at the THE WITNESS: When I spent the night?

28 Q. MR. KUJAWA: Oh. I'm sorry. You meant the time

1 that you had spent the night.

2 THE WITNESS: He said how long did I spend up there
3 on that trip. I said except for one case I have always spent
4 less than a day, less than 24 hours there. I have only spent
5 the night once.

6 MECHANIC MR. KATZ: Q. On these trips when did you normally
7 arrive at Cyan during the day?

8 A. In the morning.

9 Q. About what time?

10 A. Well, if you drove it was closer to noon. If you
11 flew, it was closer to 9:00 to 10:00 in the morning.

12 Q. And how long did you stay before you would leave?

13 A. We never stayed past 6:00 or so in the afternoon
14 or in the evening that I can remember. Either you flew back
15 to keep daylight or you drove back so you could get back before
16 midnight.

17 Q. Did you have any understanding as to what Eigan Systems
18 was doing with that El Toro in the condition it was in at the
19 time you discussed it with Jim Hebb and John Sperry?

20 A. It's hard to pin down one particular time that we
21 discussed it since both those guys were working for Atari and
22 they were working under -- you know, I believe they had a
23 separate thing for Key Games also. The time when it was up
24 there on the floor of their building, we were discussing whether
25 -- we were, I believe, at the front end of discussing making
26 it electronic pinball, eliminating all of the relays. It was
27 at the initial phase of that, I would say.

28 Q. And what was your purpose for discussing that with

1 these people?

2 A. To decide what to do next.

3 Q. Were they electronics people?

4 A. The Cyan people were electronics people and Jim Hebb
5 and John Sperry were primarily, I believe, mechanical or electro-
6 mechanical.

7 Q. Was there anybody else present with you during that
8 discussion?

9 A. No one I can name.

10 Q. Were there any Cyan people with you?

11 A. I already said that Larry Emmons and Steve Mayer,
12 I believe, were there at the time. So they were Cyan people.

13 Q. Were Jim Hebb and John Sperry at this discussion?

14 A. Yes. We did not go separately up to Hebb's area
15 and have the Cyan people join us. - It was sort of a group move-
16 ment.

17 Q. Where is Jim Hebb's area?
18 MR. GOLDENBERG: Asked and answered.

19 Q. MR. KATZ: Q. -You can answer it.

20 A. I believe they were the next floor or the second
21 floor up from where Cyan was. ^{y were} There ~~was~~ an elevator or stair
22 ^{rule a way.} ~~right-of-way.~~ ^{did you see the El Toro in any form next after}

23 Q. Did you ever see the El Toro at Eigan Systems as
24 a pure electromechanical game to the best of your recollection?

25 A. I don't remember.

26 Q. Did you ever see it later as a pure electromechanical
27 game?
28 A. In the spring of '74, I believe.

A. I would say at some subsequent time, the end of '74

1 or '75, no.

2 Q. Did you ever see the El Toro as an electromechanical
3 game in what has been referred to as the Litton lunchroom area?

4 A. That is a difficult question to answer because
5 strictly speaking anybody's electronic pinball machine, as
6 they are called, is an electromechanical pinball machine because
7 the electronics makes something mechanically move.

8 Q. I mean pure electromechanical.

9 A. As far as was it converted to being just a relay-
10 driven machine with nothing electronic more than a contact
11 and a relay, no. Look at the pinball machine.

12 Q. Well, are you familiar with conventional so-called
13 electromechanical pinball machines?

14 A. Yes. Driving game at the time. They were working on
15 a -- Q. That's the meaning that -- I'm not giving it any
16 special meaning. was being prototyped up there at the time.

17 A. Any time I remember it in the Litton lunchroom it
18 was electronic, not electromechanical. I went through that.

19 Q. Do you recall -- going continually up there.

20 A. (Interrupting) Under those ground rules. There
21 were some electronics involved, not just relays and contacts.

22 Q. When did you see the El Toro in any form next after
23 the occasion of this meeting with Jim Hebb at Eigan?

24 A. The next step was seeing it downstairs in the Cyan
25 Engineering space being worked on with the Intellec system.

26 Q. When was that?

27 A. In the spring of '74, I believe.

28 Q. Do you have any better recollection of the date than

1 that?

2 A. February to June. I mean, it was a continuous process.
3 But it was after we decided, "Yes, let's do it," that it moved
4 downstairs and we picked up the Intellec system. They were
5 doing the electrical design and working on it.

6 Q. What was the occasion of your seeing it then on another
7 one of these meetings?

8 MR. KUJAWA: You mean another one of these trips?

9 MR. KATZ: Q. Yes.

10 A. One of the other visits. I mean, I was not going
11 up there just to look at the pinball machine.

12 Q. What else were you going up there for?

13 A. Oh, a Volleyball game, the Frenzy game. They were
14 working on a Driving game at the time. They were working on
15 a -- there was a reaction testing game called, what was it,
16 "Touch Me" that was being prototyped up there at the time.
17 It's done Milton Bradley fairly well. It was just -- I don't
18 want to say periodic, because I already went through that.
19 But it was just that we kept going continually up there.

20 MR. KUJAWA: Frequently.

21 THE WITNESS: Frequently, yes.

22 MR. KATZ: Q. Now, on that second occasion, where
23 in the facility did you see the El Toro being worked on?

24 MR. KUJAWA: You have already asked that question
25 and he answered it.

26 MR. KATZ: I didn't ask that.

27 MR. KUJAWA: Yes, you did.

28 MR. GOLDENBERG: Yes, you did.

MR. KUJAWA: Go ahead and answer it.

MR. KATZ: Q. Where in the Cyan facility did you see it?

A. When?

Q. On this second occasion.

A. I'm not going to say that I didn't see it twice in the Eigan space and the next time I saw it down in Cyan. But I saw it after we -- subsequently after, and maybe it was once more, up in Eigan. I don't know that when we started working on the microprocessor development it got moved down into -- I believe it was the next floor down or two floors down into the Cyan space and as you walked in the door in the Cyan Engineering you would make a left and it was either in the -- you walked past the receptionist and it was the first space to the left or the second space to the left, depending on whether it was where Ed Schleeter was or into the next lab.

Q. Do you recall where it was on that second occasion, whether it was near Ed Schleeter or in the lab?

A. It was one of the two. I wouldn't say exactly where it was the exact second time I saw it.

Q. You don't recall? It could have been in the lab?

A. It was one of those two. It was not at Jody's desk. It was not in Steve Mayer's office. It was not in Larry Emmons' office. It was not in the machine shop and it wasn't on the porch.

Q. But do you have any specific recollection on that occasion where it was?

A. By "specific," my answer is no.

Q. Do you have any recollection of seeing it in the laboratory?

A. Yes.

Q. On what occasion was that?

A. I don't remember the specific time. It was in the spring through summer time frame.

Q. Do you have any recollection of seeing it for a third time?

A. It's difficult to say third, fourth, you know, fifth time, because I was going up there periodically. I do remember seeing it a third time. I can't tell you specifically when. I know I saw it in at least three occasions. I know I saw it three times.

Q. Did you see it more than three times?

A. Yes. Because once I saw it in the porch as a cadaver after we had abandoned it sitting out there.

Q. Where is the porch area located?

A. If you walked to Jody's desk and you made a left and you walked back towards the back of the lab area, if you looked to the right there was like a porch area and they stored all their dead carcasses there, the stuff they were in between working on's been a long day.

Q. When was that?

A. When was what?

Q. When did you see it as a cadaver on the porch?

A. I'd say after when we had the electronics running as a fully electronic thing and before they started "Let's Stratoflite" or "Superflite" and there was a period where they

1 were working primarily on the electronics, I believe, for the
2 Delta Queen to where it just wasn't being used. So they stuck
3 it out on the porch while they were working on the electronics
4 for the Delta Queen.

5 Q. Do you know how long it was out on the porch?

6 A. A couple of months.

7 Q. Then what happened to it?

8 A. As I remember, they didn't reduplicate the electronics
9 but they were using it as sort of like a test bed for finding
10 out how to drive lamps, how to drive flippers. They were using
11 it as a vehicle for testing out part of the circuitry.

12 Q. I believe on your direct testimony you said that
13 you thought they cannibalized it, the El Toro. What --

14 Q. MR. KUJAWA: I'm not sure he said that.

15 A. MR. GOLDENBERG: I don't recall any such testimony.

16 Q. MR. KATZ: Q. You didn't say they cannibalized the
17 El Toro? I thought you said that they cannibalized the El
18 Toro to make the Delta Queen on your direct testimony. Maybe
19 I am wrong, but that's what I have in my note. Alcorn and
20 Note. A. I don't remember saying that. I think he can tell
21 me I said it and I will believe him (indicating the reporter).
22 I mean, it's been a long day.

23 Q. You also used the term called open house on your
24 direct testimony. What did you mean by that?

25 A. As I remember, there was a time frame, and it wasn't
26 something where we published invitations and put them up on
27 the wall, but there was sort of a bring in the people, you
28 know, the wives and the family was invited, and we had like

1 a morning meeting where we went over the status of the projects.
2 But then there was more family members involved and people
3 in the building were wandering in and out looking over the
4 facility, I guess.

5 Q. Were you there?

6 A. Yes.

7 Q. How did you get there?

8 A. I was going up there so much it's hard to single
9 it out, but I believe I flew.

10 Q. With whom?

11 A. I believe Keenan was the pilot.

12 Q. When did this occur?

13 A. I believe it was in the summer of '74.

14 Q. Were you there with other people from Atari?

15 A. I believe so.

16 Q. Do you remember who else was there?

17 A. I don't specifically remember per this trip because
18 we were going up there, you know, I think the word is frequently.
19 But I believe it was at least Joe Keenan and Al Alcorn and
20 Nolan Bushnell.

21 Q. How long were you there? A day? Was that all within
22 the same day?

23 A. I believe so, yes.

24 Q. And on that day was there also a picnic scheduled?

25 A. I don't specifically remember a picnic or not. I
26 mean, we usually went up there and when we flew up we got in,
27 we went there, had a meeting, and we went to lunch. I know
28 at least once we went out and were sitting at picnic tables.

1 But I really can't correlate this one time with what I am terming
2 the open house. I just can't. like the record to reflect that

3 Q. So do you recall any time when you went out there

4 when there was a picnic where the Atari employees and Cyan
5 employees and members of their families got together at a park
6 in the summer of '74? It was 4:05 according to my watch.

7 A. I remember being there. I don't remember any specific
8 insight of the park. is gone from approximately 4:05 to approxi-

9 Q. Being where? I don't understand your answer.

10 MR. KUJAWA: Being at Cyan. question, I believe.

11 THE WITNESS: I was at Cyan. One time we went to
12 the Nevada County Fair after we went in the morning. One time
13 we went to the Empire Mine. One time we went to a pizza parlor.

14 MR. KATZ: Q. When you say "we," who do you mean
15 by that? pinball machine right out of the box and saying, "Here's

16 an e. A. The people that flew up from Atari: Keenan, Bushnell
17 and myself. That is not my question. Do you have any recollection

18 of e. Q. But when you were with those people flying up from
19 Atari, were you the only ones that would be there at Cyan on
20 all these different occasions that you mentioned? mechanical

21 A. That would be at Cyan? is electromechanical because
22 it is Q. Yes. nics and it has mechanical.

23 Q. MR. GOLDENBERG: I will object to this. There has
24 been prolonged examination about frequency of trips, who he
25 went with, and now we seem to be starting with that all over
26 again. I don't specifically remember seeing it just out

27 of the box THE WITNESS: I've got to leave while you argue.
28 I will be right back. ed by the manufacturer.

(Witness leaves the room.)

MR. KATZ: I would like the record to reflect that the witness left the room, the deposition room, with his last remark and I would like to have you, Mr. Reporter, note the time.

MR. KUJAWA: It was 4:05 according to my watch. He has been gone about two minutes at this point.

(Witness was gone from approximately 4:05 to approximately 4:07 p.m.)

MR. KATZ: There is an open question, I believe. MR. KATZ: There is an open question, I believe. (Record read from just before the recess.)

MR. KATZ: Q. Do you recall ever seeing the El Toro at Eigan Systems in 1973 as an electromechanical pinball game?

A. I don't ever remember a specific incident where here was this pinball machine right out of the box and saying, "Here's an electromechanical pinball machine."

Q. That is not my question. Do you have any recollection of ever seeing the El Toro as an electromechanical pinball machine at Eigan systems in 1973?

A. I have trouble with your saying electromechanical because even everything made today is electromechanical because it has electronics and it has mechanical.

Q. When I say electromechanical, I mean -- machine, if

A. (Interrupting) As it was then?

Q. Right.

A. I don't specifically remember seeing it just out of the box with nothing attached to it to make it as not as identically manufactured by the manufacturer.

1 Q. Well, do you know if the El Toro was a new game or
2 would you know if it was a new game when it was acquired by
3 Atari? *on the Delta Queen project?*

4 A. No, I don't know if we took it off the route or
5 whether we bought a new one. *wanted to do a whole lot of things*

6 Q. *was* Do you know when Atari acquired it or Cyan acquired
7 it? *Q. Was that the only occasion that you saw it?*

8 A. *Q.* I believe it was in the last part of '73.

9 Q. Now, in your testimony on direct that you saw the
10 El Toro converted or connected to the Intellec in the Litton
11 lunchroom, when was that? When did you see that there? *1973*

12 A. *Q.* I believe it was in the summer of '74. *1974*

13 Q. *Q.* Was it on any particular occasion that you saw it
14 there? *I like I said, I believe it was there for a period of*

15 A. *Q.* I believe it was around the time I am saying it was
16 like this open house thing where we came up and had a view
17 in the morning where the El Toro had already been worked on
18 in the lab and it was out of the lab and it was actually out
19 in the lunchroom and it was being used as like a test bed to
20 find out what people liked or didn't like about the electronics.

21 *Q.* In fact, I remember it was like the machine ^{was} there
22 and there was this metal cart with the Intellec on it. As
23 I remember, there was even a sign on the pinball machine, if
24 something doesn't work, phone Jody type thing. It was a feed-
25 back mechanism while it was out there because inside the lab
26 they were doing the initial work on what was going to turn
27 into the Delta Queen project. *on May 1st 1974*

28 Q. How do you know that?

1 A. Because I remember it.

2 Q. That it was this initial work that was going to turn
3 it into the Delta Queen project?

4 A. Because we decided we could make this initial El Toro
5 and the next step was they wanted to do a second generation
6 which was the Delta Queen.

7 Q. Was that the only occasion that you saw it in the
8 lunchroom in that form, on this occasion?

9 A. It wasn't there for six months. We were going up
10 there frequently. If I had to put a time frame on how long
11 it was there, I'd say it was there more than a week and less
12 than six weeks. Because the time frame we were going up there,
13 I believe it was there for at least two trips I was there which
14 -- well, like I said, I believe it was there for a period of
15 the range of a couple of weeks to a month.

16 Q. And on what basis is that?

17 A. My memory.

18 Q. Yes, but you weren't there every day during that
19 period.

20 A. You are right. I am not saying it was there every
21 day. All I'm saying is I was there one time, as I recall,
22 and I was there a second time and it was still there and the
23 spacing between the times I saw it was somewhere in the range
24 of a week to a month.

25 Q. Between a week and a month. What period of the year
26 do you place that in, all in the summer of '74?

27 A. From somewhere between May and July.

28 Q. Of '74?

1 A. Yes. It sure if it was the occasion in the lunchroom

2 Q. You are pretty firm on that, between May and July
3 of '74? It was about 33 or so teletype on which that had a

4 A. As firm as one can be on things as long ago as that.

5 Q. Do you think it could have been August or September?

6 A. No, not that late, because that late we were -- we
7 showed the Delta Queen at the MOA which was October, I believe,
8 and it wouldn't have been August or -- it definitely -- I don't
9 think it was September. August would be at the far range.

10 I just don't go with my previous best estimate. I played

11 Q. When it was in the lunchroom as you testified did
12 you ever have occasion to play the El Toro? In front of me.

13 A. I believe I played it at least once.

14 Q. Would you describe what you did to play the game?

15 A. If they hadn't cut off power to the Intellec, it ^{hadn't}
16 died. As I remember, you came up and all you did was press

17 the button to start it. For some reason if they had a power
18 spike in the building or the Intellec had been turned off, ^{here,}
19 you had to reload the program on the teletype. ^{there it was}

20 The one time as I remember it when I played it, some-
21 body had already gone and loaded the program. I just came
22 in and pushed the start button and played it.

23 Q. Did you see anybody load the program? I left to the

24 Intel A. Not the time I played it.

25 Q. Did you ever see anybody load the program at all
26 in connection with the El Toro? He memory A. Then you.

27 A. Yes. He occasion that you saw the Intellec, ^{was}

28 Q. When was that? Laboratory, who did that? ^{was}

1 A. I'm not sure if it was the occasion in the lunchroom
2 or while they were working on it in the lab. They had this
3 I think it was model 33 or so teletype on wheels that had a
4 plastic cover thing that was tied into the Intellec and if
5 the system crashed, they had to reload this long paper tape
6 to load the program into it and it sat there going chunk, chunk,
7 chunk. *end of Steve Mayer.*

8 Q. Where was that in the layout that you saw it done?

9 A. I saw it done in the layout and I'm not sure the
10 time that I saw it running in the -- the one time I played
11 it in the lunchroom I didn't have it reloaded. I'm not sure
12 when I didn't play it whether they loaded it in front of me.
13 I just forget. *talking with.*

14 Q. Do you remember ever seeing the teletype out in the
15 lunchroom? *least one occasion?*

16 A. Yes.

17 Q. When was that, on that same occasion?

18 A. As I remember, they sort of had it just sitting there,
19 you know, at least one of the times when I was there it was
20 there connected, but I didn't have to -- you know, if the system
21 was loaded, you didn't have to go touch it. It was in the
22 computer and running. *near?*

23 Q. What would happen if you shut the power off to the
24 Intellec? *in the lunchroom. was anyone else there?*

25 A. It died. You'd have to reload it and power it up
26 and reload the tape and reload the memory and then go.

27 Q. On the occasion that you saw the Intellec being loaded
28 with the teletype in the laboratory, who did that loading?

Did you do it?

A. No, not me.

Q. Did you ever do it?

A. No, not in the lab. It wasn't my show.

Q. Who did it on that occasion?

A. I don't remember specifically who it was. Either Ron Milner or Steve Mayer.

Q. Do you know who the programmer was for the El Toro?

A. I don't know specifically who programmed it. It was sort of when we came up we were working primarily with Steve and Larry. At various points Ron was involved and, you know, various people in the lab. But they were the ones we were primarily talking with.

Q. And you say you saw the teletype in the lunchroom area on at least one occasion?

A. Yes.

Q. Was it more than one occasion?

A. It is at least one. I don't know how many more. The lunchroom was not that big a deal to go see.

Q. When you saw it in the lunchroom area, the teletype, was it being used for any purpose or just sitting there?

A. What do you mean?

Q. You said you saw the teletype machine on at least one occasion in the lunchroom. Was anything being done? Did you see it in operation or --

A. I think I just said I did not see it being particularly loaded during the lunchroom session. So it was sitting there. It was -- I believe it was connected. It wasn't sitting there

1 in the corner of the room with no connection.

2 Q. Connected to what?

3 A. I believe it was connected into the Intellec which
4 was then connected into the pinball machine.

5 Q. Were there any other machines in the lunchroom at
6 that time?

7 A. At various times they had quite a few machines in
8 there. I think the Frenzy machine was there to test its push-
9 buttons. We had, we termed it the Quack machine.

10 Q. But I'm talking about on this occasion when you were
11 there and saw the El Toro in the lunchroom. What other machines
12 were there?

13 A. -- The only machine I think I can state surely was in
14 there simultaneously was the Coke machine.

15 Q. Any other coin-operated amusement games?

16 A. I believe there was but I can't specifically say
17 which ones were.

18 Q. Did you ever see anybody else play the El Toro on
19 this occasion? Let's say the first occasion you saw it in
20 the lunchroom. I believe that you are testifying that the
21 first occasion was what you referred to as the open house on
22 direct examination.

23 A. I can't specifically say remembering any one individual
24 playing it, you know, when I saw it the first time. It just
25 wasn't something I was keeping track of.

26 Q. On that occasion can you recall who was present in
27 the Cyan facility other than the Cyan employees and yourself?

28 A. At the open house I believe I referred to I don't

1 think there were any notices in downtown Grass Valley but it
2 was something that people knew in the building. I don't know
3 all the -- I'm sure I knew all of the people at Cyan at that
4 time. I'm not sure I knew all of the people in the building.
5 So I can't specifically say who was there in the lunchroom
6 or who wasn't.

7 Q. Were there a number of Atari employees who were not
8 normally working at Cyan there on that occasion?

9 A. Outside the group that flew up?

10 Q. But how many were in that group?

11 A. As I remember, we took -- it's hard to differentiate
12 between trips. It was like a couple of planes. So I believe
13 it was -- I could guarantee it was less than 20 and more than
14 five. It was two plane loads. There was probably about eight
15 or ten people. That was the people we had there from Atari
16 down in this area.

17 Q. Do you recall anybody being there with their wives?

18 A. I don't remember.

19 Q. Were you married during that period?

20 A. Yes.

21 Q. '73, '74?

22 A. Yes.

23 Q. Were you there with your wife?

24 A. I don't believe she was there.

25 Q. Your wife was an employee of Key Games; is that right?

26 A. At one point, yes.

27 Q. What period was that?

28 A. From the fall of '73 until I believe the summer of

1 '74. The beginning that were in progress. I believe that
2 that Q. On that occasion do you recall whether Lloyd Worman
3 went there?

4 A. I don't specifically remember whether he was there
5 or not. If I had to predict, I'd say he probably was.

6 Q. Were there any other games on display on that occasion
7 in the Cyan facility?

8 A. We are continually going up there and working on
9 games or looking at games.

10 Q. No. I'm talking about on that specific occasion.
11 Do you recall any other games on display at the Cyan facility
12 for this group of people from Atari to look at?

13 MR. GOLDENBERG: Mr. Katz, I think the witness should
14 be provided an opportunity to answer the question in the manner
15 that he chooses. You do seem to, as the witness starts to
16 answer, and it's obvious on some occasions he's thinking out
17 loud and framing his answer, you choose to interrupt him and
18 I think you shouldn't do that.

19 A. MR. KATZ: I am not trying to interrupt him.

20 MR. GOLDENBERG: I know you're not trying. You are
21 succeeding.

22 MR. KATZ: Not intentionally. So I really can't recall
23 Q. But can you answer the question?

24 MR. KUJAWA: Do you want the question back or can
25 you recall what it was?

26 THE WITNESS: The way things usually worked when
27 we were going up there was there was a group of games that
28 were being worked on, some were at the tail end and some were

1 at the beginning that were in progress. I believe the games
 2 that were being worked on at that time that we also saw included
 3 the Frenzy game, the thing with the pounding of the buttons,
 4 and the Quack game, which was the thing with the rifle shooting
 5 the ducks. The Frenzy one went through a couple of phases.
 6 They developed it, I think, early in the year and shipped it
 7 down to us and I think we broke it on the tests.
 8 Trade Show It was in the lunchroom for a while for a test up
 9 there. I believe it was there. But I think the games that
 10 were being worked on at the time were the Frenzy and the Quack
 11 and the pinball machine project.

12 Q. Do you have a specific recollection of the Quack
 13 game being displayed on that occasion?

14 A. I'm not sure whether it was the lunchroom or not,
 15 but I believe it was there when we were reviewing -- I'm not
 16 sure that was one. I'm not sure which room it was in, whether
 17 it was in that facility or the lunchroom.

18 Q. You don't recall where it was? What was inside the
 19 box. A. No.

20 Q. What about the Frenzy game? I mean, we had bought
 21 a set. A. You're talking about the summer of '74. Frenzy wasn't
 22 the hottest thing that we had working. So I really can't recall
 23 whether it was in the lunchroom or not.

24 Q. Do you recall whether it was in the Cyan facility?

25 A. Well, we had come down and broken it in, I think,
 26 early that year. I think it was up -- I believe it was up
 27 at the Cyan facility but it was like the second generation
 28 at that time, I believe.

Q. Do you recall if you saw it in the Cyan facility?

A. At this particular open house? I think

Q. Right.

A. No.

Q. Now, the Quack game, that wasn't commercial yet, was it?

A. No. I believe we introduced that at the Coin Op Trade Show in the fall of '74.

Q. Did you consider this Quack game to be a confidential project of Atari?

A. Yes.

Q. How about the Frenzy project, did you consider that to be a confidential project of Atari at that time?

A. Yes.

Q. And did you consider the El Toro project to be a confidential project at that time?

A. Yes, but not the same perspective. The El Toro was more just a -- well, it was confidential, what was inside the box. The outside was the existing game play of the Bally pinball machine. And that was public. I mean, we had bought a mechanical game and converted it.

Q. But at that time, the time that you first saw the El Toro in the lunchroom, did you consider the fact that Atari was doing work on a computer-controlled pinball machine confidential to Atari?

A. I would have considered how we specifically did it confidential. The fact that we were working on a pinball machine in light of the fact we had already done the -- be

1 it Atari or Syzygy had prior three-level pinball machines.
 2 The fact that we were working on the pinball machine I think
 3 was not as confidential as how we had actually accomplished it.

4 you Q. But the three-level pinball machine, that was not
 5 a computer-controlled or electronically-controlled pinball
 6 machine, was it? recall when you got to the airport at which

7 Vallo A. No. But it really didn't -- it was just a black
 8 box. A. My recollection is we got picked up.

9 Q. But at that time did you consider it confidential?
 10 And I'm not talking about at the present time. at a Dodge van

11 at the MR. KUJAWA: Consider what confidential? ship with

12 them or, MR. KATZ: Q. The fact that Atari was working on
 13 a microprocessor pinball machine. Did you consider that --

14 Larry and Let me say did Atari or Cyan consider that confidential,
 15 to your understanding? ne time of this event I believe we were

16 pick A. up. I think that how we had implemented a microprocessor
 17 pinball machine was confidential. The fact we were looking
 18 at it, I didn't think was particularly noteworthy.

19 Q. Why did you consider that how you were doing it would
 20 be confidential? recall? Do you have a specific recollection?

21 A. There's no use helping someone else do it. at, what

22 Q. Okay. Now, on this first occasion when you saw the
 23 El Toro in the lunchroom, you got there in the morning. Do
 24 you recall what time you got there? n four and a half plane

25 A. No, not specifically.

26 Q. Do you recall generally? very perceptible. Mr. Kujawa

27 A. Usually we -- I can't recall generally on that one
 28 trip. But the way things usually worked when we flew up was

1 we met at the airport around 8:00, waited for the fog to lift
2 and then we usually got to Grass Valley around 9:00 or 9:30.

3 Q. But you don't recall on that specific occasion when
4 you got there?

5 A. No.

6 Q. Do you recall when you got to the airport at Grass
7 Valley how you got to Cyan?

8 A. My recollection is we got picked up.

9 Q. By whom?

10 A. I believe it was Larry Emmons. He had a Dodge van

11 at the time. Later on, you know, in the relationship with

12 them or, you know, in time we finally figured out you could

13 rent a car at the airport and get there quicker than phoning

14 Larry and waiting for him to get there.

15 I'd say at the time of this event I believe we were
16 picked up. Larry came and picked us up in his Dodge van.

17 Q. Then you went to Cyan?

18 A. Yes.

19 Q. What did you do when you got to Cyan? What did you
20 do first, do you recall? Do you have a specific recollection?

21 MR. KUJAWA: How can he recall that, Counsel, what
22 he did first? Maybe he went to the bathroom, for God's sake.

23 THE WITNESS: You want to make a bet? I did. That
24 was usually the first thing after an hour and a half plane
25 ride.

26 MR. GOLDENBERG: You are very perceptive, Mr. Kujawa.

27 Mr. Katz, aren't you overdoing this and aren't you
28 doing this just to prolong and harass this witness with this

kind of examination? Q. When you got to the Cyan facility

what did MR. KATZ: No, I am not. the bathroom? Do you have

any? MR. GOLDENBERG: I believe you are, sir. I think
you should use some judgment on the matter. you know, the order

of things. MR. KATZ: Q. When you got there do you have any
recollection of what you did in connection with the observation
of any games? Did you have any meetings at that time? office

and A. As I remember, we were going up there frequently
so, you know, there's some difficulty in separating out specific
times, whether I went to the bathroom first or later. sure whether

it was Q. You are treating this very facetiously. I am treating
this as a serious matter. up after that.

A. No. You've got the benefit of talking to everyone
else in the world in whatever you've got. I'm just trying
to remember what actually happened. snacks. Now, it was not

a se Q. That is -- believe it was more on the order of chips

and ranch. MR. KUJAWA: Mr. Katz? Stop, Mr. Katz. I resent

your characterization of the witness as treating this very
facetiously. I don't believe he is. I think you are mistaking

the witness's ordinary demeanor as being facetious. He is

a very conscientious individual. If you don't like his either

personality, that is your problem. I will not let the record

stand with your characterization of his treatment of his
testimony. thing like that.

Q. MR. KATZ: Well, I understand your position, Mr.
Kujawa. I was only reflecting my observation.

A. MR. GOLDENBERG: But you are mistaken.

Q. MR. KUJAWA: Do you have a question? lab tour, did

the ~~explo~~ MR. KATZ: Q. When you got to the Cyan facility what did you do after you went to the bathroom? Do you have any specific recollection of what you did on that occasion?

A. I do not specifically remember, you know, the order of reviewing the games versus the socialization. My best recollection is we got there and various people split off to go to the restroom, various people went to Larry Emmons' office and had some coffee and just kicked discussions around. We went through a lab tour, talked about various projects and then things opened up and there were some -- I'm not sure whether it was hors d'oeuvres. Just some snacks were brought in.

Things pretty much opened up after that. Joe Kacmar and Nolan Bush

Q. Do you recall specifically on that occasion that there were hors d'oeuvres or food of any type there?

A. As I remember, there were snacks. Now, it was not a served meal. I believe it was more on the order of chips and munchies at the time. That's as close as I can get.

Q. Are you positive or could you be confusing this with a different occasion when you were there?

A. There's a real feasible chance, ^{as I was} of going up there frequently that I could be wrong about a week or two on either side.

But I don't think I'm confusing it with any occasion more than that, you know. I'm not confusing spring versus fall or anything like that. He may well have been there.

Q. But you believe that this occurred in the summer of '74?

A. I believe so. Games, I really didn't pay a lot of

Q. Now, during the time you went on this lab tour, did

1 the employees of Cyan stop working -- there but you don't recall

2 Were they working while you went through there?

3 Were they part of the group tour? Typically There may have

4 been. A. I don't remember any difference between this trip
5 and any other. Usually the format was the people that were
6 working kept working until you came there and asked them a nat.
7 question. They answered what they were up to. There was no
8 -- people didn't stop working just because we arrived in the
9 door. Work only continued like through half the day and there

10 was. Q. Did you go with the group tour on this occasion?

11 the A. I would usually -- I believe this time since I was
12 a little more in contact with things than Joe Keenan and Nolan
13 Bushnell, I usually knew what I was seeing before I got there.
14 So I would usually sit down with someone, like go over and
15 talk with one of the guys while Nolan and Joe got updated.
16 So I don't believe I faithfully followed step by step, you
17 know, the tour. I caught up with them, as I remember, at various
18 steps. An open house at that time; is that right?

19 Q. Do you recall the people who were on that tour when
20 you were there? I believe I specifically said it was an

21 open A. I believe it was Nolan -- the only one it would be
22 for sure would be Bushnell and Keenan and Alcorn. It before,

23 you Q. W. You don't have any recollection of anybody else?

24 A. Worman was there. He may well have been there. I don't
25 I mean, he was at Atari at the time. He may have very well
26 been there on this specific trip. Since I was working day
27 to day with Keenan at Key Games, I really didn't pay a lot
28 of attention to Lloyd. You played the El Toro game on this

Q. So there were other people there but you don't recall their names; is that your testimony?

A. I just don't recall specifically. There may have been more people there. There are just people you remember and people you don't. I don't remember anyone else.

Q. Why did you call it an open house on direct examination when you referred to this occasion?

A. I think that the munchies and the fact, as I remember, the work only continued like through half the day and there was an incident as far as familiarizing or socializing from the people from down at Atari with the people from Cyan. There was a business purpose and a socialization purpose.

Q. Do you recall when you first ever referred to this as an open house?

A. I'm not sure I specifically referred to it as an open house until today.

Q. So you don't have any recollection of it ever being called an open house at that time; is that right?

A. What you asked me isn't what you asked me before. It's the first time I believe I specifically said it was an open house or mentioned that term. The only time I can guarantee is now. I don't know if anyone else referred to it before, you know, before now by me.

Q. Do you recall what day of the week this occurred on?

A. Not specifically. I don't believe it was a Monday or Tuesday. I believe it was towards the middle to the end of the week. I would guess a Thursday or Friday.

Q. And you said you played the El Toro game on this

1 occasion; is that right?

2 A. We have said so much today I'm not going to say what
3 I said before. How is it?

4 Q. Okay. But do you recall playing it on this occasion?

5 A. I recall either playing it or seeing it played and
6 I believe if I didn't play a whole game, I touched the flipper
7 at least a few times. recollection, it was about 20 by 30 or

8 20 by Q. Do you recall whether you started to play the game
9 on this occasion?

10 A. No. That wouldn't have mattered. It wouldn't have
11 impressed me if I had or hadn't. Is it or seeing it played?

12 Q. Now, did anything else occur in this lunchroom on
13 that occasion other than the El Toro being played?

14 A. I'm not sure which other games were in there. I
15 know that I probably got a Coke when I walked in before I hit
16 the machine. But other than that, I don't remember anything
17 specific. Was that on the first occasion you saw it in the

18 Q. Do you recall that specifically, getting a Coke?

19 A. I just know every time I went to Cyan the first thing
20 I got was a Coke and the second time I went was I got another
21 Coke. The group from Alcorn that came up and the people,

22 Q. Were there chairs in that lunchroom?

23 A. As I remember, there was -- the Coke machine was in-
24 around the corner as you walk in. The El Toro was on the right.
25 There were a couple of tables or chairs, but it was not, you
26 know, a real fancy lunchroom. It was just a place to get a
27 Coke and sit down for a minute. and Alcorn and I'm not sure at
28 that Q. Was it in the nature of an alcove off the hallway?

in the Litton building? ~~now, I suspect he was.~~

A. It was a big alcove. ~~To the lunchroom were all these~~

~~people.~~ Q. About how big?

A. Twice as big as the room we are in. ~~were there. When~~

~~we were~~ Q. About how big would you say that was?

A. Well, 20 by 30, 20 by 40, something like that.

Q. That's your recollection, it was about 20 by 30 or 20 by 40? ~~Now, on the next occasion when you saw the El Toro~~

~~in the~~ A. Yes. ~~room, when did you place that?~~

Q. Were there a number of other people in the lunchroom when you were there either playing it or seeing it played?

A. I don't specifically remember anyone, you know, ~~be~~ building -- ~~ok~~ or two after we were up there the first time and saw ~~it~~. You know, the building isn't Grand Central Station. I don't remember specifically anyone else there when we were playing it.

Q. Was that on the first occasion you saw it in the lunchroom? ~~This second occasion?~~

A. Yes. ~~I don't specifically remember.~~

Q. By "we," who do you mean? ~~played the game on that~~

~~second~~ A. ~~Q.~~ The group from Atari that came up and the people from Cyan that were walking us around. ~~it was a matter of~~

~~you're~~ Q. ~~See~~ But who was in that group when you were in the lunchroom? ~~What did you see on that second occasion?~~

A. I'm sure I was in the lunchroom more than once, ~~on more~~ this particular occasion, The walking entourage was Bushnell, Keenan, Mayer, Emmons, myself and Alcorn and I'm not sure at that point whether Worman -- I don't remember him being there.

But based on the time frame, I suspect he was.

Q. And when you went into the lunchroom were all these people with you?

A. I believe they were there while we were there. When we walked in the door I'm not -- described, the cart.

Q. Do you recall anybody else?

A. I don't specifically recall anyone else, no.

Q. Now, on the next occasion when you saw the El Toro in the lunchroom, when did you place that?

A. I'm not sure I did place it.

Q. Could you place that in time?

A. Since we're going up there frequently it would be within a week or two after we were up there the first time and saw it in the lunchroom.

Q. When you were in the lunchroom were you with anybody else?

A. Which time?

Q. This second occasion?

A. I don't specifically remember.

Q. Do you recall whether you played the game on that second occasion?

A. No, not specifically. I mean, it was a matter of you've seen it once. The second time isn't that big a thrill.

Q. What did you see on that second occasion?

A. I don't remember seeing anything different than before. It was just there.

Q. Was the Intellec still there?

A. I believe it was.

Q. Was it connected to the El Toro?

A. It was connected to the El Toro.

Q. Was it on a stand?

A. What do you mean by stand?

Q. The stand that you have described, the cart.

A. I believe so.

Q. Is your recollection firm on that? Do you have a very specific recollection on that?

A. I have a specific recollection of seeing it there at least once. I believe I saw it there a second time. If someone told me I saw it, you know, once on Monday and for some reason we came up there on Tuesday, you know, I could believe it. But it was there but it was not set up there specifically for us. I'm firm on the fact it was there. It was there for a while and for people to play and get their input.

Q. How do you know that it was there for that purpose?

A. Because that's what was told -- that's what I remember. I remember seeing something like that little card or sticker on it saying, you know, for comments call Jody and give her the inputs on when it failed. It was a test.

Q. Where was that card on the machine?

A. I believe it was on the back glass.

Q. Do you know who put it there?

A. No.

Q. Who told you the purpose of putting this out? You say you were told. Who told you?

A. I can't specifically say who told me. It was the

intent -- the intent was to discover how to make the pinball run and what were the problems. It's just not something that I would have remembered who told me.

Q. You don't know who told you?

A. No. I just said that.

Q. And you have no recollection of who was with you on this second time when you saw the El Toro on in the lunchroom?

A. Not specifically, no.

Q. Did you play it on that second occasion when you saw it?

A. I really don't remember.

Q. Do you recall whether you saw anybody else play it?

A. Not specifically. I just don't.

Q. On this second occasion do you know what day of the week that was?

A. No.

Q. The beginning of the week or the end of the week?

A. No.

Q. How sure are you about this time span between the first and the second, not very sure?

MR. KUJAWA: Is that what you want him to testify to?

MR. KATZ: No.

MR. KUJAWA: Then why did you propose it?

MR. KATZ: He doesn't sound like he's very sure.

THE WITNESS: If you had to ask whether it happened or didn't, I'm -- and it was a bet your butt, bet your life thing or not, and you had to be right either way, I'd say, yes, it happened the second time. As far as whether it was

five days or seven days, I wouldn't take that deal. But as far as was it the second time, I'd say yes positively.

Q. To the best of your recollection it was how long the second time?
 A. That was a question I just told you I wasn't going to bet my ass on. It was more than three or four days and less than a month.

Q. Did you ever see it there on the third occasion?

A. I don't specifically remember seeing it set up like that period for the third visit, no.

Q. Did you have any discussions about the El Toro as to how it played with anybody after you saw it on the first occasion, that you recall?

MR. GOLDENBERG: This is the first occasion he was in the lunchroom?

MR. KATZ: In the lunchroom, yes.

A. I don't remember a specific conversation. The end effect of going up there and seeing it was, we decided, somewhere between the first occasion and starting Delta Queen that we had proven that, yes, it was transparent, that it was electronic, it worked as far as we could tell as good as a mechanical pinball, and we wanted to proceed with the next phase.

Q. Who was that decision made by?

A. Ultimately it was made by Nolan Bushnell.

Q. Were you involved in that decision making?

A. I think you will have to ask him since he didn't conduct a formal vote, but I believe -- and it's almost

also Q. Did you become aware -- every time I say one or two

more questions. MR. GOLDENBERG: Can the witness finish his answer?

questions. MR. KATZ: Q. I'm sorry. Yes.

A. I'm saying I believe I was involved because my opinion was asked. I remember I was part of the discussion where we talked about it. But the final one who ended up telling Grass Valley was Nolan or Joe. presently on a midnight flight, 12:05

flight. Q. Was this decision made at any kind of planning meeting?

recess. A. I'm not sure whether it was made at a planning meeting or just a regular, you know, discussion with the Grass Valley guys. The end effect was we started the work on the Delta West Queen because we wanted to see whether we could make more than one. he had at home.

Q. Do you know if the decision was made after the first occasion when you saw the El Toro in the lunchroom? material

that A. I believe it was made after the first occasion.

I couldn't tell you whether it was made before the second time I saw it. MR. GOLDENBERG: Well, I am not. I ask that.

MR. KUJAWA: Let's take a break.

(Short recess.) I think you owe us that, sir.

MR. KATZ: Back on the record. The reporter has tried a couple of people who haven't answered. Rather than make a marathon out of this into the night, and we are all tired, I'm sure, I would like to adjourn the deposition till tomorrow at a reasonable time and finish it up tomorrow morning. I'm sure that we will be done before lunch tomorrow. I shouldn't say I'm sure. Every time I give a time estimate, and Mel could confirm this, that I'm almost always wrong and it's almost

always longer than I estimated. Every time I say one or two more questions it always turns into four or six or ten more questions.

MR. GOLDENBERG: Your candor is appreciated, Sidney.

MR. KATZ: Anyway, I would suggest that we do that. It would be really more convenient. I have things scheduled for tomorrow, too. I am presently on a midnight flight, 12:05 flight, to Chicago on United Airlines and I will attempt to reschedule my flight also.

MR. KUJAWA: Let's do it this way: I would prefer if we can go a little longer tonight. It's 5:10 now. At least go to 6:00 o'clock. The witness has broken the engagement that he had at home.

MR. GOLDENBERG: I am agreeing to this if Mr. Katz would seriously commit himself to review tonight the material that he has to keep tomorrow as short as possible.

A. MR. KUJAWA: I'm sure that he will do that.

Q. MR. GOLDENBERG: Well, I am not. I ask that.

A. MR. KATZ: Yes, I will do that.

Q. MR. GOLDENBERG: I think you owe us that, sir.

MR. KATZ: I don't know that I do. I will agree that we will review the material and try to condense so that it will be handled as expeditiously as I could reasonably do it.

MR. GOLDENBERG: Mr. Bristow, is that acceptable to you?

THE WITNESS: If continuing tomorrow is what is needed, I will do it. I would much prefer to go as far as we can since,

you know, it's 5:15 and leaving San Francisco to go where I'm going at 5:15, to go to 6:15 is going to save me ten minutes, I'd rather get as much as we can done tonight.

MR. GOLDENBERG: I think that is a good suggestion.

MR. KUJAWA: Well, we have the court reporter to consider as well.

MR. KATZ: The reporter has indicated to me that he was very fatigued from working all day and he preferred to stop at 5:00.

MR. KUJAWA: Do you think you could continue until 6:00?

THE REPORTER: Surely.

MR. KATZ: Q. After the time you indicated that you might have seen the converted El Toro in the lunchroom on the second occasion do you have any recollection of seeing it again back in the laboratory in its converted form?

A. No.

Q. And by laboratory, I mean the Cyan facility. It was

A. No.

Q. Did you testify that you saw it in what you referred to as a cadaver form in the back porch? Is that correct?

A. Yes.

Q. When was that?

A. After seeing it in the lunchroom.

Q. About how long?

A. A while is an imprecise term. A couple of months. Three months later I think we were through with it and it was sitting on the back porch.

Q. Do you know how long it was out there?

A. No.

Q. Do you recall when they started to your knowledge using it as what you indicated to be a test bed?

A. Not precisely.

Q. How about do you have any recollection of when the Delta Queen project began?

A. I believe it was in the summer of '74.

Q. Was it the summer or was it the fall?

A. It's bounded by that. I believe it was summer to late summer.

Q. Was the El Toro to your recollection on the porch after the Delta Queen project began?

A. Yes.

Q. How long had it been out there to your recollection before the Delta Queen project began?

A. I'm not sure how long it had been out there because I was visiting on these periodic or frequent visits. It was just if they weren't actively working on it, they were cramped on space and they put stuff on the back porch.

Q. About how long do you recall that period to be from when you first saw it on the back porch to the time when the Delta Queen project started, a matter of weeks, a matter of months?

A. No more than months. It was I just didn't track it. We had learned what we wanted from it. I don't know when they put it there, how long they kept it there precisely.

Q. When you were asked some questions on direct exami-

nation you indicated that the machines were put out in the lunch area to collect beer money or something of that nature. Do you recall that?

A. I don't recall specifically saying it in those words.

Q. Well, I forget exactly what your words were. But to some extent about collecting money for something for the Cyan people. Is that correct?

A. I'm not sure what I am being asked.

Q. Do you recall on direct testimony that you indicated that the games in the lunch area were used for collecting money for beer or coffee money or something?

MR. KUJAWA: I think it was party funds.

MR. KATZ: Q. Or party funds or something of that nature?

A. I'm not going to try and go back into the past. The games they had in the lunch area, as I understand, had two purposes: they had some existing old games that were out there that were donated by the people that made them and they collected money from them and they used it for be it beer or parties. They also used that area to expose people to new games to find out how they held up, how they worked and if people liked them. There was no single purpose for having game out.

Q. But were the games that were out there normally coin operated and you had to put money in it to operate the games according to your best recollection?

A. I believe they had a mixture of them.

Q. And of the kind of games that required coins for

operation, what were those games, that you recall?

A. I don't specifically remember which ones were a coin or which weren't.

Q. But during this period, let's say 1974 during the year 1974, is it your recollection that it required a coin to play some of the games in the lunch area?

A. Yes.

Q. Would you consider that to be more than, say, half of the games that were out there?

A. I really wasn't tracking it. As I say, it was on the order of a half, but it's very -- I never had -- you know, they gave me money if I didn't have money to play them. So I really didn't keep track.

Q. Who gave you money, the people at Cyan?

A. Yes. If I needed a Coke and had flown up, Jody would give me money out of the petty cash to get a Coke.

Q. When we were talking about the coin op, I'm talking about the coin-operated amusement games. Were you talking about the Coke machine?

A. I am just saying I did not particularly have any reason to track which were or which weren't free playing and which ones were coin operated.

Q. When you were talking about coin-operated games, were you including a vending machine like a Coke machine?

A. When I was answering your question I was excluding the vending machine. I'm just saying we were guests up there and if I wanted to get a Coke and I didn't have a quarter that Jody would lend me a quarter. I wasn't tracking what I spent

money on and what I didn't.

Q. Of the games that were in the lunch area that required a coin for operation, did those include pinball machines?

A. I don't remember either way.

Q. Did they include video games?

A. When you asked were some of the games requiring coins, I was not differentiating between video and pinball machines.

Q. But is it true that you would include both pinball games and video games as requiring the coins for actuation of the games that were in the lunchroom at that time in '74?

A. I would not differentiate between them.

Q. But you would include both types; is that correct?

A. I think I'm answering "Yes." I'm just saying that I did not separately keep track of whether the video games required a coin and the pinball games didn't. It was just coin-operated games of either kind may have required money or didn't and I just wasn't watching it.

Q. And it could have included either or both; is that right?

A. The only one for sure was the Coke machine only took quarters.

Q. But there were pinball games or video games that required quarters also; is that correct?

A. That may happen, yes.

Q. Is that your recollection during 1974?

A. Yes.

Q. Now, on the El Toro, on the first occasion when you saw the El Toro in its converted form with the Intellec in

1 the lunchroom, did that require a quarter for actuation, if
2 you know?

3 A. I believe it was on free play.
4 Q. What was on free play?

5 I mean, MR. GOLDENBERG: What you asked him about, sir, was
6 on free play.

7 MR. KATZ: Q. What do you mean by free play?

8 A. You did not have to put money in it. It was free.

9 Q. Let me ask you this: Do you recall whether there
10 was a coin door on the El Toro at that time?

11 A. As I remember there was a coin door.

12 Q. Was the coin door unlocked?

13 A. I don't know.

14 Q. Do you have any recollection about that at all?

15 A. No, not specifically.

16 Q. Do you have any recollection as to how the game was
17 initiated to put credits on it at that time?

18 A. I believe you just pushed the start button.

19 Q. What is that belief based on?

20 A. My memory. I said I believe. My memory.

21 Q. So it's your recollection that you push the start
22 button and to put credits on the game at that time; is that all
23 right?

24 A. No. I believe you pushed the start button and it
25 started the game.

26 Q. Oh. How did you put a credit on it, do you know?

27 A. Not specifically.

28 Q. Did you need credits to play the game at that time,

the El Toro modified game with the Intellec?

A. You're talking about technical terms. Pushing the start button, as I remember, simultaneously started the game and if it needed credits to start it, it gave it credits. I mean, you just pushed the button and it started.

Q. Was that the button that was on the pinball machine itself?

A. I believe so. Was blue or gray. Maybe green.

Q. Was that located on the coin door?

A. Yes. I don't remember.

Q. Now, this sign that you said you recalled being on the game on the back glass of the game, do you recall ever seeing any sign like that on any other game when you were in the lunchroom area at the Litton building in Cyan?

A. No. I don't recall whether any other games on the first

Q. And it's your recollection that you saw that sign on the first occasion when you were there? I don't remember

A. Yes. Some were free play and some were on coins.

MR. GOLDENBERG: Let's see, I think that is about the fourth time for that question. That seems to be a reasonable number, sir. Why don't we go on to something else?

MR. KATZ: Q. Now, when you were there do you recall ever seeing it again on any game subsequently in the lunchroom area? The converted El Toro?

A. Not specifically, no. First visit, yes.

Q. Do you recall having any discussions about that sign with Jody Sperry?

A. No. Not your best estimate, more than one and less

Q. Do you recall any discussions with anyone as to whether any person had contacted or made any response to that sign?

A. No.

Q. How big was that sign, to the best of your recollection?

A. A three-by-five index card, a blue one.

Q. Pardon?

A. I believe it was blue or gray. Maybe green.

Q. Was it hand-lettered?

A. I don't remember.

Q. And you don't recall seeing that sign out there again on any subsequent visits?

A. I don't specifically recall seeing it there. I would not -- it may have been, I just don't know.

Q. Do you recall whether any other games on the first occasion when you saw that at the lunchroom were on free play?

A. There may have been. I am saying I don't remember the exact mix. Some were free play and some were on coins.

Q. Do you recall how many games were there in the lunchroom?

A. MR. GOLDENBERG: When?

Q. MR. KATZ: On that occasion.

MR. KUJAWA: Which occasion, the first visit when he saw the converted El Toro?

MR. KATZ: Q. The first visit, yes.

A. Not specifically. More than one and less than 20 for sure.

Q. Is that your best estimate, more than one and less

than twenty? You know what the construction was that

A. Give me a margin for error and I will give you a better answer. I mean, I'd say it was definitely less than a dozen and more than one. It was an electronic pinball machine.

Q. Did you ever have occasion to eat in this lunchroom?

A. No. If you know what that term means.

Q. But you testified that it was your normal practice to go into the lunchroom to buy a cold drink, is that right, whenever you went out to Cyan? With an external box of a computer

A. Yes. It was electronic.

Q. Do you know if that lunchroom is still in existence?

A. It was the last time I was up there. I went to some other

Q. When was that?

A. I believe the fall of last year.

Q. Do you know what games were in there? Was in, what,

A. No.

Q. Were there games, coin-operated games, in there?

A. I don't remember.

Q. Did you look at any of the games that were there when you were there? Last Thursday on the telephone?

A. Not particularly. I was in the last couple of weeks.

Q. Did you ever see a Delta Queen game in the lunchroom area of the Litton building?

A. I think so. I was on the phone?

Q. When was that? Is or the phone when we talked.

A. I believe it was after we had shown -- we rushed over to get the prototype in '74. I think it was early in '75 there was one there. I was at Cyan?

Q. Do you know what the construction was? Was that an electromechanical machine as I'm using the term, a conventional electromechanical pinball machine?

A. No. I believe it was an electronic pinball machine.

Q. Was that a standalone machine?

MR. GOLDENBERG: If you know what that term means, sir. During that open house, you thought that the El Toro was placed in THE WITNESS: I'm not sure whether it was standalone in that it was self-contained with an external box of a computer or not. I believe it was electronic. was in the laboratory?

MR. KATZ: Q. Are you saying you are not sure whether it was self-contained or whether it was connected to some other external system? up to a computer system.

A. Yes. until that time of last Thursday, or when that tele. Q. Why is it you can't recall that? That was in, what, '75, you say? was afterwards; is that right?

A. Why is it I can't recall that? I don't know. I'm just saying I can't. or recalled it differently?

Q. Do you recall having a telephone discussion with me I believe it was last Thursday on the telephone? led to it.

I ha A. I recall a conversation in the last couple of weeks. If you tell me it's Thursday, I could check, but I will believe it was Thursday. position, and I was trying to remember the

part Q. And Mr. Kujawa was on the phone? I did not remember the

comp. A. I believe he was on the phone when we talked. it,

the Q. Do you recall telling me during that telephone conversation, do you recall discussing with me an occasion referred to as the open house at Cyan? a Queen in the lunchroom but you

1 A. I remember discussing what we termed an open house.

2 Q. And do you recall telling me --

3 A. I'm just saying I remember discussing an open house.
4 I'm not sure you and I have the same specific recollections
5 in details.

6 Q. Do you recall telling me that at the open house,
7 that during that open house, you thought that the El Toro was
8 placed in the cafeteria area to test but that when you saw
9 it there it was self-standing and that you only recalled seeing
10 it connected to the Intellec when it was in the laboratory?

11 A. I remember telling you that and I remember your
12 conversation jogging my memory to recall that it was in the
13 cafeteria hooked up to a computer system.

14 Q. So up until that time of last Thursday, or when that
15 telephone conversation took place, your recollection was dif-
16 ferent than it was afterwards; is that right?

17 A. No, that is not right.

18 Q. Had you ever recalled it differently?

19 A. I believe the truth, to the best of my knowledge,
20 is it was in the cafeteria with a computer system tied to it.
21 I had not really thought of this issue at all until basically
22 the last -- when we talked or shortly before it, you know,
23 since my last deposition, and I was trying to remember the
24 past and when we first talked about it I did not remember the
25 computer system tied to it and the more we talked about it,
26 the recollection became clearer.

27 Q. Is it true that in that telephone conversation you
28 told me that you saw the Delta Queen in the lunchroom but you

1 never saw the El Toro free-standing in the lunchroom? Was
 2 that A. I don't specifically remember ever word from our
 3 conversation. But my memory is I do not remember the El Toro
 4 standing free-standing in the lunchroom.

5 Q. Do you recall telling me that you would have thought
 6 that anyone who would have seen the El Toro at the Litton of
 7 building would have kept it confidential?

8 A. Not in those words.

9 Q. Do you recall that subject being discussed?

10 A. Yes.

11 Q. What do you recall that you told me?
 12 with A. I can't specifically recall what I told you, so I
 13 will just tell you what I remember which is that the people
 14 who would have wandered into that open house were people that
 15 were in the Litton building who were in the business in the
 16 Litton building and that they had -- I don't believe they had
 17 signed any non-disclosure agreements. They had signed no non-
 18 disclosure agreements. But that it was probably not in their
 19 interest to disclose something that would be injurious to a
 20 tenant in the building. But they were under no requirement
 21 to not do that.

22 Q. How do you know that they were under no requirement?

23 A. I don't.

24 Q. They could have been; is that right?

25 A. They could have been. They may not have been. I

26 don't know.

27 Q. When did you have this prompting of your recollection?

28 MR. KUJAWA: Jogging of his memory. Had Mr. Litkin

1 MR. KATZ: Q. Jogging of your recollection? Was
2 that after we got off the telephone?

3 A. No. I believe, if you check, if you made notes as
4 we were talking, the matter became clearer to me while we were
5 talking on the phone.

6 Q. Did you have any discussions about this subject of
7 the El Toro within the last couple of months with anybody else?

8 A. No.

9 Q. Did you talk about the subject with any of the other
10 attorneys involved in this, Mr. Rifkin or Mr. Harding?

11 MR. KUJAWA: You mean prior to his telephone conference
12 with you?

13 MR. KATZ: Q. Prior to your telephone conference
14 with me. A. Now, on the first occasion you talked
15 to Mr. A. I'm not sure I specifically talked about the El Toro,
16 but I did talk to Mr. Rifkin, I believe, and Mr. Goldenberg
17 prior to our conference. I believe I talked to Mr. Rifkin, yes.

18 Q. When you talked to Mr. Rifkin and Mr. Goldenberg,
19 were they on the line together with you? Did you talk to them
20 both together?

21 A. I believe they were together on one occasion, yes.

22 Q. How many occasions did you talk to them? How many
23 occasions did you talk to Mr. Rifkin?

24 A. Since when? Have been in June; is that right?

25 Q. Within the last two months.

26 A. I believe I had a contact with Mr. Rifkin's office
27 while he was at the Consumer Electronics Show. I never talked
28 to him about the subject in detail until -- I had Mr. Rifkin

1 and Mr. Goldenberg on the line like a week prior to when we
2 were on the conference call with yourself and Mr. Goldenberg
3 and Mr. Kujawa. I believe only once really did we talk about
4 it before you were involved. . .?

5 A. MR. KUJAWA: I don't think Mr. Goldenberg was on
6 the line when Mr. Katz was on the line. . . .

7 MR. GOLDENBERG: Yes. I think the witness misspoke
8 in that connection. The conference call with Mr. Kujawa and
9 Mr. Katz I was not a party to. . . .

10 THE WITNESS: It was your office. Okay.

11 A. MR. KATZ: Q. Now, the first --
12 A. With five parties all on the phone it's hard to tell.

13 MR. GOLDENBERG: Yes, right.

14 Q. MR. KATZ: Q. Now, in the first occasion you talked
15 to Mr. Goldenberg during the Consumer Electronics Show --

16 Q. MR. GOLDENBERG: I think he said Mr. Rifkin. . . .

17 A. THE WITNESS: I believe I talked to Mr. Rifkin, yes.

18 Q. MR. KATZ: Q. During the Consumer Electronics Show,
19 during the time of the Consumer Electronics Show. This was
20 the show in Chicago; is that right? . . .

21 A. Yes.

22 Q. In 1982? . . .

23 A. Yes. . . .

24 Q. Which would have been in June; is that right?

25 A. Yes. . . .

26 Q. Was that on the telephone?

27 A. Yes.

28 Q. Was it also in person? . . .

1 A. No.

2 Q. Who called whom? Did Mr. Rifkin call you?

3 A. I believe so.

4 Q. What did he tell you?

5 A. I believe he wanted to discuss some matters regarding
6 litigation and I told him until I had talked to counsel back
7 at Atari it was a show as I was basis and I wasn't going to
8 talk to anyone until I had talked to people at my company.

9 Q. Did you have any subsequent conversation, then, with
10 Mr. Rifkin during the Consumer Electronics Show?

11 A. Not at the show. No. We traded messages and I finally
12 got ahold of him once, I believe, at the show where I had told
13 him that. MR. KATZ: Q. Mr. Rifkin or Mr. Goldense.g.

14 Q. And he came out to see you?

15 A. I never saw him. I can save you a lot of time. Mr.

16 KATZ: Q. This was the show at McCormick Place; is that correct?

17 A. Yes. I had one telephone conversation and that is the

18 one. Q. Were you out at McCormick Place? Mr. Rifkin was

19 A. Yes. So just why don't you leave me out of it from

20 here. Q. Did you subsequently contact anybody from Atari about
21 this matter? A. I mentioned your name because your name

22 was. A. I have contacted our corporate counsel.

23 Q. Who was that? A. I was trying to be helpful.

24 A. Skip Paul. Q. Do I have a question?

25 Q. Did you contact any other people at Atari about this
26 matter or at Cyan?

27 A. No.

28 Q. Did you contact Warren Kujawa about this matter? A. Yes.

1 A. No.

2 Q. Then did you take any action in connection with this
3 matter after contacting Skip Paul?

4 A. No.

5 Q. Did you then receive any other telephone calls from
6 either Mr. Goldenberg or Mr. Rifkin?

7 A. I'm not sure. I believe it was Mr. Rifkin who contacted
8 me after the show and I said, "I haven't heard from Skip's
9 office. Contact them." I passed the call on to Mr. Paul's
10 office.

11 Q. Then what happened? Did he call you again?

12 A. MR. KUJAWA: Who, Rifkin?

13 MR. KATZ: Q. Mr. Rifkin or Mr. Goldenberg. It was

14 probably MR. KUJAWA: You can answer that.

15 MR. GOLDENBERG: I can save you a lot of time, Mr.

16 Katz. I have not called Mr. Bristow within the past year and

17 I have only had one telephone conversation and that is the

18 one he spoke to you a moment ago about where Mr. Rifkin was

19 on the phone. So just why don't you leave me out of it from

20 here on in and shorten your questions a little bit?

21 A. MR. KATZ: I mentioned your name because your name
22 was mentioned by the witness. as you know, was not on the line?

23 A. MR. GOLDENBERG: I was trying to be helpful.

24 THE WITNESS: Do I have a question?

25 MR. KATZ: Q. Yes. Did you talk to Mr. Rifkin after

26 that? And Mr. Paul wasn't on the line?

27 A. I believe after I got back from the show I got a
28 call from Mr. Rifkin. I told him to contact Mr. Paul's office.

1 I got a call from someone in Mr. Paul's office.

2 MR. KUJAWA: And after that did you get a call from
3 Rifkin?

4 THE WITNESS: After that I got a call from Mr. Rifkin.

5 MR. KATZ: Q. When was that, approximately, as best
6 you can recall?

7 A. Shortly before the conversation we had together.
8 And he said, yes, we'd like to set up a conference call among
9 these various parties.

10 Q. Wait. Before you get to that, what was the substance
11 of Mr. Rifkin's call?

12 A. I don't remember the details. Basically he wanted
13 to arrange a -- tell me that there was a deposition that was
14 probably going to be desired to be taken from me and he wanted
15 to try and set up a -- he wanted to talk about my recollection
16 of the past and I'm not sure whether he at the same time tried
17 to pre-arrange a conference call in advance of the deposition.
18 Q. Do you have any understanding or belief as to whether
19 anybody else was on that line when you talked to Mr. Rifkin
20 at that time?

21 A. I don't think there was anyone else on the line.

22 Q. Mr. Kujawa, as far as you know, was not on the line?

23 A. No. The first time Mr. Kujawa was on the line to
24 my knowledge was when we had the conference call with you and
25 him and me.

26 Q. And Mr. Paul wasn't on the line? Or had no knowledge

27 A. No, not to my knowledge.

28 Q. Did you have any meeting with Mr. Rifkin after that

1 call?

2 A. I have not seen Mr. Rifkin since 1976 or '75, whenever
3 that thing was.

4 Q. Had you had dealings with Mr. Rifkin in 1975 or '76?

5 A. I had met Mr. Rifkin in conjunction with litigation
6 between Magnavox and Atari.

7 Q. And that was in '75 or '76, to the best of your
8 recollection?

9 A. I believe it was '75, actually, summer.

10 Q. Did you have any discussions with Mr. Kujawa or anybody
11 from Mr. Kujawa's office between the first telephone call from
12 Mr. Rifkin and the time that you spoke to me?

13 Q. MR. KUJAWA: Answer yes or no.

14 MR. KATZ: Q. When you spoke to me over the telephone.

15 A. No.

16 Q. Did you have any discussions with any other attorneys
17 connected with this case to your knowledge such as Mr. Harding
18 or Mr. Lynch within the last couple of months?

19 A. No.

20 Q. Did you have any discussions about the El Toro project
21 within the last couple of months, that is until the date of
22 this deposition, with any other employees at Atari or Cyan?

23 A. After our conversation, the conference call we had,
24 in the course of talking to Ron Milner at Cyan Engineering
25 at Grass Valley on some other business, I believe when we were
26 talking, you had mentioned that Mr. Schleeter had no knowledge
27 of any El Toro being in the lunchroom and somehow --

28 Q. You mean Mr. Schleeter or Mr. Milner?

MR. KUJAWA: He means you.

THE WITNESS: I believe you told me Mr. Schleeter had no knowledge of any El Toro being in the lunchroom and someone else had mentioned that Milner had mentioned seeing the El Toro in the lunchroom. So my only conversation with anyone since in the last months was just saying to Mr. Milner, "I don't want to know what you said ^{but} ~~because~~ I understand that at least someone else remembers the damn machine being there and at least I'm not nuts."

MR. KATZ: Q. And that was the conversation you had with Mr. Milner?

A. That is correct.

Q. When did that occur?

A. Like one or two days after we had our conference call.

Q. Was that on a weekend or during the work week?

A. No, it was during the work week. We talked during the week and it was before the end of the week when I was talking with him about some other business.

Q. What did Mr. Milner say when you said that?

A. He basically said, "I'm glad." He was pleased that someone had had a similar recollection and similarly to what I said, didn't want to go into any detail because we both were afraid of spending long hours in depositions. I mean, we didn't trade any information. It was sort of at least there's a fellow sufferer in the woods with a memory. ^{pt your attorney's instruc-}

MR. GOLDENBERG: I would like the record to show that that was a hearsay answer invited by Mr. Katz. Therefore,

I assume he will have no objection to it when it is offered in evidence in this proceeding.

MR. KATZ: I will reserve all objections to hearsay when the --

MR. GOLDENBERG: No, sir. Not when you ask the question you can't.

MR. KATZ: I don't know about that. This is a question of discovery, too.

Q. Where was this discussion with Mr. Milner?

A. I was in my office and he was in Grass Valley.

Q. And that was over the telephone?

A. That's correct.

Q. Did you have any discussion of this with anybody other than Mr. Milner?

A. No.

Q. Did you ever discuss it with Mr. Schleeter?

A. No.

Q. With Mr. Emmons?

A. No.

Q. With Mr. Mayer?

A. No.

Q. Did you ever discuss the subject with Mr. Kujawa?

MR. KUJAWA: Hold it. That calls for an answer that I consider to be within the attorney-client privilege and I will instruct the witness not to answer.

MR. KATZ: Q. Do you accept your attorney's instruction?

A. Yes.

1 Q. Could I assume that when Mr. Kujawa instructs you
2 not to answer that you will follow the instructions in the
3 future?

4 A. Every case is by its own.

5 Q. I can't assume it, then. I should then ask you if
6 you are going to follow the instruction?

7 A. I can't guarantee it, but I would say the odds are,
8 barring unforeseen circumstances, I will take my attorney's
9 advice.

10 Q. Did you review any documents in connection with
11 preparing for this deposition?

12 A. I read the transcripts of my prior two depositions.

13 Q. Did anyone instruct you to read those depositions?

14 A. No.

15 Q. When did you read those depositions?

16 A. This morning.

17 Q. Did you complete them?

18 A. Yes.

19 Q. Did you find anything in reading those depositions
20 that you conclude now was not accurate?

21 A. No.

22 Q. Did you do anything else in preparing for the deposi-
23 tion?

24 A. Try and remember.

25 Q. Try to remember what?

26 A. The past. I mean, after our conversation I said
27 I was going to try and remember, you know, you were jogging
28 my memory and I was going to try and remember. I have been

1 trying to remember.

2 Q. Did I ever tell you to try and remember?

3 A. No, I don't think so.

4 MR. KUJAWA: We've got five minutes to go, Mr. Katz.

5 MR. KATZ: Yes. I'm just debating whether to start
6 on another subject.

7 MR. KUJAWA: If it's going to take longer than five
8 minutes, I suggest you not start it.

9 MR. KATZ: Okay. I have another subject. It will
10 definitely take longer than five minutes.

11 (The deposition was recessed to Friday, August 6th,
12 1982, at 8:30 a.m. at the Hilton Inn, San Francisco Airport.)

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